S. HRG. 100-491
Part 2

FAA INDEPENDENT ESTABLISHMENT ACT OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1600

TO ENHANCE THE SAFETY OF AIR TRAVEL THROUGH A MORE EFFECTIVE FEDERAL AVIATION ADMINISTRATION, AND FOR OTHER PURPOSES

MARCH 23, 1988

PART 2

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE
84-489 O WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S261-42

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii
WENDELL H. FORD, Kentucky
DONALD W. RIEGLE, JR., Michigan
J. JAMES EXON, Nebraska
ALBERT GORE, JR., Tennessee
JOHN D. ROCKEFELLER IV, West Virginia
LLOYD BENTSEN, Texas
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
BROCK ADAMS, Washington

JOHN C. DANFORTH, Missouri
BOB PACKWOOD, Oregon
NANCY LANDON KASSEBAUM, Kansas
LARRY PRESSLER, South Dakota
TED STEVENS, Alaska
ROBERT W. KASTEN, JR., Wisconsin
PAUL S. TRIBLE, JR., Virginia
PETE WILSON, California
JOHN MCCAIN, Arizona

RALPH B. EVERETT, *Chief Counsel and Staff Director*
WALTER B. MCCORMICK, JR., *Minority Chief Counsel and Staff Director*

SUBCOMMITTEE ON AVIATION

WENDELL H. FORD, Kentucky, *Chairman*

J. JAMES EXON, Nebraska
DANIEL K. INOUYE, Hawaii
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana

NANCY LANDON KASSEBAUM, Kansas
TED STEVENS, Alaska
ROBERT W. KASTEN, JR., Wisconsin
JOHN MCCAIN, Arizona

CONTENTS

	Page
Opening statement by Senator Ford	71
Opening statement by Senator Stevens	72
Opening statement by the Chairman	73

LIST OF WITNESSES

Burnley, Hon. James H. IV, Secretary, DOT	73
Crandall, Robert L., chairman and president, American Airlies, Inc	101
Halaby, Najeeb, Dulles Access Rapid Transit, Inc	106
Prepared statement	111

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Humphrey, Hon. Gordon J., U.S. Senator from New Hampshire, statement	118
Jensen, Frank L., Jr., president, Helicopter Association International, statement	117
The Regulatory Process, chart in envelope	121
Von Kann, Clifton F., president, National Aeronautic Assn., letter	119

FAA INDEPENDENT ESTABLISHMENT ACT OF 1987

WEDNESDAY, MARCH 23, 1988

U.S. SENATE,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 a.m., in Room SR-253, Russell Senate Office Building, Hon. Wendell H. Ford presiding.

Staff members assigned to this hearing: Steve Palmer, senior professional staff member and Patty Hahn, minority staff counsel.

OPENING STATEMENT BY SENATOR FORD

Senator FORD. I am going to read a brief statement and then yield to my colleague, Senator Stevens, for an opening statement, and then we will have your statement, Jim, and go to questions.

This is our fourth hearing to consider S. 1600, legislation to create an independent Federal Aviation Administration.

To date, we have had strong support from the majority of the witnesses who have appeared before the subcommittee. They have been united in their view that major changes are needed to enable FAA to fulfill its mandate of insuring a safe and efficient air transportation system.

I strongly believe that the options of the structural reform now being considered, our approach of establishing an independent FAA best serves the air traveler and the aviation industry. Just as importantly, perhaps, enactment of S. 1600 is an achievable goal, I believe, in the 100th Congress, as evidenced by the overwhelming number of co-sponsors who have joined me in supporting this bill.

Today we are fortunate to have the Secretary of Transportation to present his views on FAA and the need for structural changes.

Secretary Burnley, in his short tenure, is to be commended for moving the administration away from the knee-jerk reaction against any major changes to the structure of FAA to a position of increasingly openmindedness.

With this willingness for change, Secretary Burnley has convened a departmental task force to examine ways in which FAA can better insure the safety of our aviation system. Co-chaired by FAA Administrator McArtor and DOT Assistant Secretary Seymour, this task force has been directed by Secretary Burnley to report back in 45 days on ways to make internal reforms to the FAA.

While I praise Secretary Burnley for this action, I remain committed to the need for this legislation. I say this because there are certain necessary changes which can only be accomplished through enactment of statutory language.

For example, the most critical reform of the FAA is the need to secure continuous dedicated funding. Reliance on the existing annual budget cycle has left the FAA high and dry when it comes to obtaining needed funds for airport development, modernization of air traffic control system, and long-term R&D.

We must find solutions to this and many other problem areas before we can say our efforts to improve the FAA have succeeded.

In this light, let me state that I believe the proposal to establish an independent FAA meets the criteria against which Secretary Burnley believes any change in the FAA structure must be judged.

While our bill does not make those changes in its current form, we can return to August 6, 1987, when I said at that time, introducing S. 1600, that the current bill was only a framework on which we will build our solutions, and that out of a series of hearings I intended, and I quote from that statement, "to bring forth a bill more significantly developed."

We have learned a great deal from our hearings about specific problems facing the FAA, and before proceeding to committee consideration of this bill I can assure you, Mr. Secretary and others, that we plan to take the necessary steps to include vital reforms.

Let me conclude by saying that we welcome Secretary Burnley and look forward to his statement.

I am also pleased that the subcommittee will hear Mr. Crandall, Chairman and CEO of American Airlines; and Mr. Halaby, testifying for a second time on this matter, this time on behalf of a coalition of aviation groups who are striving to develop specific recommendations for needed reform of the FAA budgetary, procurement and personnel process.

So without further statement, Senator Stevens.

OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. Thank you very much, Mr. Chairman. I join you in commending the Secretary for his willingness to be flexible on the issues presented by the bills before the committee.

I would hope that you might carry back to the executive branch a request to go further, however. I can conceive a special task force of Baker, Burnley and Baker to look over the basic issue, which is the right of users to have the money they pay into funds for services and protection spent on those things that are necessary to insure their safety, and the convenience and necessity of the functions of government that they support directly, not as taxpayers but as users.

Those are not only aviation. It is also highway and the Postal Service. The three fights we face right now primarily with the administration in the budget process come from the feeling that all funds that come in from such users must be treated as taxpayers' funds.

Now, I think that is basic to what you are doing, Jim, and I think it is reflected in your statement and your adherence to administration policy that these funds are to be treated on budget in any event.

Until we can cross that bridge of treating user charges, taxes or special fees paid by the people who use the airlines or use gas or the sources for this aviation trust and and the similar thing for highways and the Postal Users, the ratepayers who pay it, it is not taxpayers' money.

I think until we cross that bridge, we are going to be fighting. I would urge you to try to get the administration not to shy away from that bridge.

Thank you.

Senator FORD. Thank you, Senator.

Senator Danforth.

Senator DANFORTH. I have no opening statement, Mr. Chairman.

Senator FORD. I am disappointed.

Senator DANFORTH. I will write you a letter.

Senator FORD. That will be fine.

I have a statement that the Chairman would like to have included in the record.

[The statement follows:]

OPENING STATEMENT BY THE CHAIRMAN

I want to commend the Chairman of our Aviation Subcommittee, Senator Ford, for his continued efforts to ensure that the Federal Aviation Administration is capable of providing for a safe and reliable air transportation system.

He has done this by focusing on the long-term structural needs of the FAA—which is needed because of the unique way in which that agency is both manager of the system's resources, as well as the industry regulator. This puts the FAA in an apparent role of conflict -- something which must be carefully examined to ensure that there is no confusion in the priorities of the agency. Safety is, and always will be, the foremost responsibility of the FAA.

By holding these hearings, Senator Ford has initiated a public debate on the question of the FAA and how it best will serve the public. He has focused the attention of DOT, the aviation industry, academia, and Presidential study commissions. And while I am still looking at the effect of his bill to establish an independent FAA, I believe that he has planted the seeds that will result in significant improvements in the FAA and its ability to ensure aviation safety.

Senator FORD. Mr. Secretary, you may proceed, and welcome.

STATEMENT OF HON. JAMES H. BURNLEY, IV, SECRETARY, DEPARTMENT OF TRANSPORTATION

Secretary BURNLEY. Thank you, Mr. Chairman. I will try, if I can, to do a somewhat abbreviated version of my prepared statement. I would ask that you put it in the record in its entirety.

Senator FORD. We will have a vote at about 11:30 a.m., and I hope to get through most of the witnesses by then.

Secretary BURNLEY. I do appreciate this opportunity to be here today to discuss an issue about which we all care deeply; that is, the role of U.S. Government in aviation safety.

You and Senator Kassebaum, I think, deserve a great deal of credit for encouraging and providing a forum for this crucial debate.

I also want to commend you for your willingness to consider the full range of alternatives.

As you said when you introduced S. 1600 last August, and I am quoting from your statement then, "there are a variety of alternative proposals currently under scrutiny which attempt to address this issue. These run the gamut from simply removing the airport and airway trust fund from the budge process, which I endorse', and I have to emphasize that was in your quote, "to the full privatization of the air traffic control system.

In this series of hearings, I intend to explore these and other concepts for funding the FAA and, again, I call upon all parties to consider the available alternatives and make appropriate recommendations."

Again, I commend you for that openminded approach, because that is the only way we are going to get at this issue.

Concerns about the ability of the Federal Government to cope with the dynamic and growing air travel network have been with us for over three decades.

Worries about strains on the air traffic control system, the threat of midair collisions, the number of controllers, and the need for new equipment did not arise for the first time after economic deregulation of the airlines began to be phased in 10 years ago or after the air traffic controller strike in 1981.

From its inception, the aviation industry has been characterized by rapid technological changes.

On the other hand, the FAA has struggled since it was created to accommodate new demands on the air traffic control system and in the regulation of air safety.

Although the simultaneous effects of the NAS plan implementation, the illegal controllers' strike in 1981, and the economic deregulation of the airlines may have placed unique strains on the FAA, I think we would all agree that flexibility and responsiveness to rapid change are uncharacteristic of large Federal bureaucracies, and the FAA is no exception in that regard.

So as we look toward the 21st Century, I am convinced that fundamental changes in the FAA's organizational structure are essential if we are to keep pace with the growing demands on the system.

I do want to work with Congress in considering all reasonable proposals for basic reform.

In considering S. 1600 or any other proposal, we should first define precisely the problems that need to be addressed and then develop specific criteria against which we can measure potential solutions. In addressing these problems, however, we must guard against any loss of accountability by the regulators of aviation safety. I believe there are five criteria against which any reform proposal should be judged.

First, it must address the problem of rigid personnel rules that prevent efficient deployment of key personnel.

Second, it must remove the burden of abstruse procurement rules that prevent timely acquisition of new technology.

Third, the proposal must liberate the air traffic control system from the uncertainties of the Federal appropriations process and insure adequate resources on a long-term basis.

Fourth, there must be adequate oversight and maximum accountability to insure public safety.

Fifth, there should be consistency in both safety regulation and in the development of air traffic control services at every level of the organization in charge of each of those functions.

Now, let me emphasize a fundamental point, Mr. Chairman. Last week Administer Alan McArtor testified before this subcommittee and described the progress he is making on a number of efforts included in his Impact '88 program. I am particularly impressed with the fresh perspective and strong leadership that he is providing on training issues, both inside the FAA and within the aviation industry.

My purpose today is different. It is to respond directly to the committee's invitation to me to testify, and I am quoting from your letter of invitation, "on the relationship between the FAA and the Department of Transportation as well as other long-term structural changes that would improve the FAA's ability to promote and insure aviation safety."

Now, I have been at the Department, despite my relatively tender years, for one-fourth of its history, and I want to briefly describe both some of the strengths and weaknesses of the present structure. I do this knowing there is some risk that my testimony is going to be viewed as hostile to the FAA. Nothing could be further from the truth.

If I am going to respond in good faith to this subcommittee's request, I think I have to show you somewhat more of the iceberg that the executive branch usually puts on display before the legislative branch.

The FAA is perhaps a unique Federal agency, because it combines three distinct missions. First, it is charged with the establishment and enforcement of safety regulations for private industry, and in this role the American people rightfully expect the FAA will be the "tough cop."

Second, it is a service provider, making air traffic control services available to public and private aviation. Now, this assignment is much like running a huge airline requiring thousands of decisions each day about where and when planes will fly.

We all want and expect maximum cooperation between the FAA and the personnel running the air traffic control system and the airlines and the other users of the system.

The third role, the FAA is directed by statute to "encourage and foster the development of civil aeronautics and air commerce." Among the responsibilities, that includes providing navigational aids, helping our manufacturers in their efforts to sell aircraft abroad, and generally promoting the interest of U.S. aviation.

Because we have become accustomed in the FAA in its present form, few find this tripartite mission strange or unusual. Yet, when compared to other modes of transportation and with Federal regulatory agencies in general, it is very odd indeed.

For example, the Maritime Administration promotes the commercial interests of the maritime industry, but the Coast Guard, a separate agency within the Department, regulates and enforces maritime safety. We have those as very distinct functions housed in different places.

The Federal Railroad Administration regulates rail safety but it does not operate switching yards and, happily, it no longer runs any railroads.

Given the high level of public concern about both aviation safety and the FAA's chronic difficulties in keeping pace with the burgeoning, technically sophisticated industry, this is an appropriate time to ask whether one entity, the FAA, should continue to carry out three different and often contradictory public missions.

Now, in its safety regulatory role, the FAA must constantly balance the interests and desires of its immediate constituents, the aviation community, with those of the general public.

In addition, because the lion's share of the agency, that is 85 percent of the staff and two-thirds of the budget, is dedicated to providing on-demand air traffic services to competing carriers and general aviation, a hybrid FAA is often in the difficult position of balancing safety and traffic volume considerations.

Finally, because the FAA is charged with promoting and protecting the industry's commercial interests, it is sometimes reluctant to take safety and enforcement actions that impose significant costs and burdens on that industry.

How can we reasonably expect the FAA or any other entity to be a service industry, a promotional bureau, and at the same time act as an enforcement agency?

The FAA is filled with competent, dedicated professionals who have excelled rather particularly, I think, in the delivery of air traffic control services. Yet, the very structure of the agency places them, I think, in an inherently untenable position.

I am not alone in this concern. When National Safety Transportation Board Chairman Jim Burnett testified before the subcommittee last fall against creation of an independent FAA, he said, and I am quoting from him, "On the other hand, from where I view it, the DOT has on occasion provided the pressure needed to get significant Safety Board recommendations implemented, recommendations that, based on FAA resistance, would be languishing still without the Secretary's," and he put it in quotes "interference."

Chairman Burnett pointed to the NTSB's uphill battle to convince the FAA of the importance of upgrading cockpit voice recorder and flight data recorder standards. The FAA had resisted for years the Board's advice in this area.

He noted that only former Secretary Dole's intervention had prevented the FAA from opposing outright international cooperative efforts to upgrade the standards for those recorders worldwide.

When the FAA eventually submitted a rule for OST review, it fell short of NTSB's recommendations; but in his testimony before you, Chairman Burnett gave my predecessor credit for having gotten the FAA to take any action at all.

I should note that Congress included a directive in the continuing resolution just last December requiring the FAA to issue another rule further expanding the categories of aircraft that must be equipped with recorders.

Now, as Chairman Burnett's testimony illustrates, the inherent conflict in the FAA's missions is more than theoretical. Just as I have been impressed with the superb job the FAA does with limited resources handling air traffic, I have been equally dismayed during my time at the Department at the institutional resistance to improving safety regulations.

Sometimes a clear signal from the Administrator or the Secretary is all that is required to get things moving. On other occasions, it has been necessary to use the bureaucratic equivalent of a cattle prod to get the FAA to take needed safety actions.

Accusations that the Office of the Secretary has on occasion secondguessed the FAA are entirely true. Take, for example, the question of the duration of airmen medical certificates.

In December 1983 the FAA submitted to the Secretary a draft final rule that would have extended the duration of certain airmen medical certificates, and the FAA did not classify the rule as significant, but OST insisted on reviewing the rule because of its potential adverse effect on safety. The FAA had found that decreasing the frequency of medical exams for pilots under the age of 55 would save $59.5 million in the cost of medical examinations.

The FAA recognized that there would be additional accidents due to undiscovered medical conditions. Over 10 years, in fact, it estimated the rule would lead to approximately 36 additional fatalities, three additional serious injuries and seven minor injuries, along with 19 destroyed and five substantially damaged aircraft. That was in the cost benefit analysis.

However, because the FAA put a value of only $18.2 million on these lives, injuries and damages, it argued that the rule should go forward. The Secretary refused to permit the rule to be issued.

Even years of Congressional pressure tc beef up safety standards have not always produced the desired results. The testimony before the House Public Works Committee, Subcommittee on Aviation in 1984, for example, then Representative Levitas observed, and I am quoting from him:

"In the course of our hearings we learned that FAA began an investigation of a 1961—I repeat, 1961—that is 23 years ago—accident in Denver, Colorado that airline passengers who survived impact were killed by toxic gases as they attempted to evacuate the aircraft in a post-crash fire situation."

Following a lengthy description of what he described as the FAA "start/stop begin/pull back program" on cabin interior materials and flammability, Representative Levitas noted that it had been 18 years since the FAA first issued an NPRM, called "Crashworthiness and Passenger Evacuation" yet the FAA at that time still had as a flammability standard the 1947 regulation.

This failure to respond by the FAA occurred despite Congressional pressure and a series of hearings. As Representative Mineta said at this same hearing in his opening statement, and I am quoting:

"It is a measure of our frustration with the past performance of the FAA as a safety regulator that we are here today to consider a long list of bills which would direct the FAA to take various actions to further improve aviation safety. Particularly in the areas of crashworthiness and fire safety, there is a long history of hearings in this committee extending back to 1976 urging regulatory actions by the FAA."

Representative Mineta became so frustrated that he demanded that the FAA provide his subcommittee with a monthly report on progress in issuing new cabin safety rules.

When Secretary Dole learned of the FAA's nearly two decades of footdragging on this issue, she did immediately order that upgraded cabin rules be completed and issued without further delay.

As a result both of her sustained personal commitment and continuing Congressional pressure, the FAA at long last began to issue rules setting tougher flammability standards for seat cushions and interior cabin materials and requiring floor-level emergency lighting, requiring smoke detectors and automatic fire extinguishers in lavatories, more fire extinguishers in the cabin, and requiring tougher standards for crew member protective breathing equipment.

A stronger oversight by the Office of the Secretary, including particularly the activities of the safety review task force that was created about four years ago not only led to issuance of the rules that I have mentioned, it also dramatically shortened the time that FAA rulemaking consumes.

She established throughout the Department deadlines for each significant rulemaking. Over the last five years, the average time from the FAA's first notice to the final rule has been about 19 months, compared to an average of 32 months over the preceding five-year period of 1978 to 1983. She cut it almost in half. I think we can further improve these rulemaking procedures.

The FAA recently had an outside contractor analyze the rulemaking process, and I have brought a chart today that the contractor prepared for the FAA for the subcommittee's review.

As you can see on this chart, there are some six boxes that are circled in blue that indicate points in the review process where the Office of Management and Budget reviews the rules. Those are circled in blue.

There are some 16 boxes that are circled in red, and those are the places where the Office of the Secretary reviews the rules.

The remaining 355 boxes are all within the walls of the Federal Aviation Administration.

Obviously we ought to be able to further streamline our system. I have asked our internal task force on FAA reform to take a hard look at why we have to have that level of review.

Senator FORD. I must just say to you, Mr. Secretary, I understand now why it takes so long to get a letter answered.

Secretary BURNLEY. Well, you know, sir, it has cleared up that same mystery for me. It is amazing we ever find the bouncing ball if you look at that chart.

Last spring in its report to Congress on management of the Department, the General Accounting Office said that as a result of the work of the Safety Review Task Force and several other secretarial initiatives, and I am quoting from the GAO:

"The FAA is making a comprehensive, systematic effort to update safety regulations, realign inspector duties and responsibilities to more closely fit in the airline industry, use automated program data to determine staffing requirements, revise its criterion procedures for hiring and training inspectors, strengthen its ability to anticipate changes in the program environment, and assure that inspection offices receive accurate, timely and consistent policy and program guidance."

That is not my description of what happened as a result of the Safety Review Task Force. That is the GAO one year ago.

Senator STEVENS. Mr. Secretary, I have to leave, but do you mind if I just ask a question about that chart?

You know, if my six-year old were here, she would tell me which chart she would like to work on, because that top one goes right smack through, then you drop down and you go up, and you can go up and get get another fast track and come down and get in the Secretary's Office, and another fast track and you get to the end.

Why do not all the regulations go that way?

Secretary BURNLEY. Senator Stevens, that is precisely what I have asked our task force to look at but, as you can see, you are right. There are at least, I guess, four parallel tracks there. Three of them are a lot simpler than the last one.

Again, all those boxes are FAA boxes. If you use a simple route, you then have a lot of people who do not get a piece of the action. So what I have asked the task force to look at it is whether all those people need to get a piece of it or whether we can always stick to those top one or two tracks.

That is the question that this chart raises, I think, very vividly.

Again, this chart was prepared by an FAA consultant, so this is an internal exercise that they triggered, and they all get credit for that.

Senator STEVENS. We congratulate Secretary Dole in changing it from 32 months to 19 months, but does it still take over a year and a half to deal with safety issues?

Secretary BURNLEY. Yes, sir. That is too long, and that is why I have asked them to see if we cannot move the normal rulemaking up the ladder on this chart.

You are exactly right. That is too long.

Senator STEVENS. Even Congress is not that slow.

Secretary BURNLEY. That is right. But I have to say, we are doing better than Representative Levitas' two decades on these cabin safety rulemakings. So progress is being made. We are just not where we need to be yet.

Now, the inspector staffing example cited by the GAO in this report of a year ago is one that Congress knows well. In the early 1980s, the FAA cut the inspector work force by 25 percent because it thought increased management productivity and automation eliminated the need for so many safety inspectors.

Well, even when this did not turn out to be the case and Congressional and public concern mounted, the FAA did nothing to reinforce its depleted inspector ranks. It was after Elizabeth Dole again became Secretary and learned of that decision to cut inspectors by 25 percent that she ordered that it be reversed and that the FAA undertake an inspector hiring and training program.

She also ordered that the inspection process be completely overhauled in no small part to get rid of the "buddy system" that had existed for years between the carriers and those assigned to police them.

Her tough actions on safety, Mr. Chairman, evoked some hostility. For example, a senior executive from a major airline told me recently that he strongly supports an independent FAA because the Office of the Secretary in recent years has pressed the FAA to be, using his word, "confrontational" toward the industry on safety issues.

Although we have made some progress, the FAA continues, I believe, to require close, constant oversight. In April 1986, the Safety Review Task Force in its preliminary draft report on FAA domestic aviation security recommended that the FAA require that everyone, including airline and airport personnel, who entered a secured area be screened by the same process used to screen passengers.

During discussions about the preliminary recommendations, FAA staffers and industry representatives strenuously opposed this recommendation as too burdensome, and they insisted that it be modified to recommend tighter but not universal screening of employees.

Even though the task force agreed to make this change, the FAA still delayed implementation of the recommendation on employee screening for a year. They also failed to implement fully a later decision requiring 100 percent detection of the FAA test objects, the dummy weapons.

After the PSA tragedy last December, I ordered that universal screening be implemented and reiterated my previous request that enforcement of aviation security regulations be stiffened.

Yet, I discovered a few weeks ago that, among other problems, the FAA staff was taking enforcement action only if the screeners failed to detect at least three out of five test objects and was only issuing a fine for the third failure.

Furthermore, violations at different airports where the same airline had partial or sole responsibility were not being added together.

So on March 8 I sent a memorandum to the Administrator, asking that he give his personal attention to this matter to insure that all aviation security regulations are being vigorously enforced. He agreed.

Now, the FAA's approach to aviation security is indicative of the inherent conflict in the FAA's mission which I alluded to earlier, but it is also an illustration of the FAA's well-known culture. To some extent, that culture is a product of the FAA's closeness to the specialized industry that it regulates, services, and promotes.

Commenting on one manifestation of the FAA's institutional mindset in a recent public television documentary on the FAA's slowness on these cabin safety rules, Representative Oberstar described the FAA as having, "its vision on the longer term, the perfect, trying to achieve that goal of perfection. While waiting for that to arrive, they dismiss other short-term, more useful and lower cost interim, very beneficial steps.'

The Congressman's astute observation underscores a critical point. No one at the FAA is anti-safety. In fact, just the opposite is true. But often it does take someone from outside the organization to insist that there may be ways to enhance safety that are being overlooked.

As Chairman Burnett has pointed out, that person is going to be more effective if he or she has authority to make binding decisions in regulatory and safety matters. It is a classic case of the value of the system of checks and balances.

Another example of this has been the FAA's reaction to the delay in development of microwave landing systems, which is spelled out in detail in my testimony submitted for the record.

The need for checks and balances, I think, was also demonstrated by the problem that arose in medical certification of pilots. In November of 1986 it was discovered that the Federal Air Surgeon overruled his expert medical staff and recertified numerous pilots with serious medical problems.

Despite unprecedented, repeated expressions of strong concern by airline and labor representatives, the FAA's leadership's reaction was to protect and defend these decisions, and the Secretary had to insist that corrective action be taken. As a result, the Air Surgeon was removed from his position, and all the "special issuances" he had approved for pilots were reviewed and evaluated by an outside team of physicians.

Now, as I mentioned, some aviation interest groups have argued that one advantage of an independent FAA is that the Department could no longer meddle in the FAA's business or micromanage its affairs.

However, anytime you have the regulated interests telling Congress that they need less oversight from those charges regulating them on safety matters, I think healthy skepticism is in order. It was micromanagement that got us, among other things, updated and stricter cabin safety rules, and more inspectors as this 1987 GAO management study documents.

As a provider of air traffic control services, the FAA would be able to do a better job, I think, if it were free of the funding, procurement, and personnel constraints that go with being a Federal agency.

Promotional responsibilities could go with air traffic services or be assigned to another appropriate agency, such as the Department of Commerce.

Yet, as the examples I have mentioned illustrate, the FAA as a safety regulator requires all of the supervision, checks and balances of any other such agency.

Thus, I believe that the evidence is compelling that the safety regulatory side of the FAA should continue to report to the Department or to some other cabinet-level agency. Otherwise, the neces-

sary day-to-day oversight and accountability will be lost with a comparable loss over time in aviation safety.

The men and women of the FAA are highly competent and dedicated people, but it is not reasonable to ask them to be both helpmate and watch dog to the aviation industry.

After 30 years of public and Congressional frustration and concern, I believe it is time to recognize that the FAA, as it was structured in 1958, is an experiment which has failed.

I welcome the opportunity again, Mr. Chairman, to testify before the subcommittee on these issues, and I again want to commend you for conducting this series of hearings. I look forward to working with you and the subcommittee towards a solution.

I will be happy to answer any questions.

Senator FORD. Thank you very much, Mr. Secretary.

Let me ask you why has the Secretary's Office always thwarted the request for funding of FAA when you have had a surplus in the Trust Fund?

Secretary BURNLEY. The answer, Mr. Chairman, is that, in fact, I do not know of instances where on the operational side we have thwarted it in any way.

The place where we have had discussions that involved both OST and OMB usually have involved the airport improvement program.

An example of how this dynamic works in a way that I think you would be comfortable with is that, two or three years ago, the then administrator told the Secretary that he only needed to ask for an additional 250 controllers in the budget that was being put together at that point, and her response to that was one of some shock and dismay.

She pressed him about whether he would do better with more controllers in that budget. The answer was no, that that was all that they could train at the academy out at Oklahoma City was the number that you start with out there to yield an additional 250.

After some further discussion, she simply ordered that the budget ask for an additional 500 controllers for that year.

So I do not think it is possible to say it works all one way or all the other. You have instances on AIP where certainly in the budget preparation process the FAA has asked for more than it ended up getting out of that process.

On the other hand, on the operational side, the cut in inspectors is another good example, Mr. Chairman, when she ordered that that decision simply be reversed and that we restore those inspectors that the FAA had deleted.

Some days it works the other way, and you get better outcomes because of this process.

Senator FORD. Let me say, Mr. Secretary, you have sure been way off on your forecasts.

Secretary BURNLEY. Yes, sir.

Senator FORD. You have been behind the curve for a long, long time, and that substantiates the reason for less money.

I think the forecasts have been made to fit whatever money that OMB will allow you to spend.

Secretary BURNLEY. Mr. Chairman, let me comment on that. Since I got to the Department in 1983, and you are talking about forecasts on traffic that are used concerning how many controllers we need, if I understand you correctly.

Senator FORD. Yes. You are way behind.

Secretary BURNLEY. We have not on a single occasion since 1983 ever seen either OST or OMB cut the request for controllers. Again, the only instance I know of a change was when Secretary Dole doubled the number over what the FAA asked for.

Senator FORD. What about last year?

Secretary BURNLEY. What happened last year, Mr. Chairman, was——

Senator FORD. We did not get them, and then we asked for 1,000. Finally, she agreed to add 955.

Secretary BURNLEY. Again, you are absolutely correct about the FAA forecast understating the number needed. That is a dynamic that is not at all driven on the other hand by OST or OMB. Those numbers are done inside the FAA and are simply presented to us as what they expect.

You are absolutely right about last year. Those numbers grossly underestimated the traffic that was coming, and we did end up coming to you last spring asking for more controllers, and you gave us more than that still.

So that process certainly leaves a lot to be desired, no question about it.

Senator FORD. You have outlined a series of abuses, and I think I can use that word, with FAA under DOT. Now, all of this is the Secretary of Transportation's responsibility.

Secretary BURNLEY. Yes, sir.

Senator FORD. What if they had not been there? What if you had had a seven-year administrator recommended by the President and approved by the Senate? Do you think there would have been any different procedure?

Secretary BURNLEY. Mr. Chairman, I think that ultimately that depends on whether you get the right administrator or not.

Senator FORD. That means if you have the right Secretary.

Do you want to answer that question?

Secretary BURNLEY. Well, sir, you have one. I hope so. For the moment, you do.

Senator FORD. At least for the time being, maybe.

Secretary BURNLEY. But you have a big difference. If it turns out you have the wrong administrator right now, the wrong secretary, they do serve at the pleasure of the President.

This has nothing to do with where they are housed. It is just a question of tenure. Once you lock somebody in for a fixed term, it seems to me that you, in fact, run a very serious risk of reducing accountability.

The reason is if you get somebody in there who is not doing it the way you want, you cannot get them out. The President cannot get them out, either.

Senator FORD. Mr. Secretary, they are accountable to the Congress, and I think we could find a way.

Look, we have had so many administrators in the last seven years they are going in and out like a revolving door. How can you have accountability or stability under those circumstances?

Secretary BURNLEY. Mr. Chairman, I think that you have had clearly three in the last seven years, and I am not here to say whether that is good or bad.

All I am saying is if you lock somebody in for a very lengthy term and that person gets more comfortable with the industry he is supposed to regulate, then that may be a much more serious problem than what you describe as a revolving door.

Let me be sure I do not lose the thrust of my testimony this morning. All I have said to you this morning is that there is great value on the safety regulatory side of checks and balances and accountability on a day-to-day basis.

Coming back to your question about controller numbers and projections of traffic, I do feel quite strongly that if the air traffic control part, the operational part of the FAA, was somewhere else besides just stuck in a department inside the executive branch so it could run much more in accord with the realities of aviation versus the political realities of Washington, DC, we would be better served as a country. I do think that we would be in better shape.

Senator FORD. We can not do that?

Secretary BURNLEY. Well, sir, I think that we can do it, and that is one reason, I think, that the hearings you initiated last fall are so important. I think the Congress, if it comes to a conclusion that that makes sense, can devise a method like that.

But again, I think the very important distinction which we cannot lose sight of is that there are fundamental differences among the different hats that the FAA wears today.

On the one hand, the safety regulatory function I think does need to still be in a place where there is day-to-day accountability where, if you cannot get what you want out of an administrator, whether tenured or not, there is a secretary you can collar or where there is somebody who can say, after 20 years of the Congress beating on them about doing something on this flammability standard, do it.

That is very different, however, from the service that we provide day to day through the air traffic control system. It is much more like a business. It is something that we, in effect, sell to the users. That is what the user taxes often are used to pay for, as you know, and it is a service that can be provided, I think, on a much more realistic basis than we do today if it is freed up from our processes.

Let me give you an example on the NAS Plan. Over the last year we have been installing these new host computers at our en route centers. They are a dramatic improvement in technology over the 20-year old

computers they are replacing. They are a lot faster, they hold a lot more data, and they are going to be a lot more reliable.

One reason we know they will be a lot more reliable is that those very computers have been sold by IBM to the private sector for quite a few years now, and in fact IBM has stopped making them for the private sector. We are the only folks buying computers of that vintage, because they are now several generations down the road.

Well, you can make the FAA independent, but so long as it is still subject to the Federal requirements on procurements, when you have rapidly evolving technology like computers they are always going to be behind.

If you look at the host computer procurement it is a pretty good one as our procurements go, but even if we had done that one perfectly, we would still be behind the curve buying computers two or three generations out of date.

So I think you have to get at that kind of issue as you shape your solution to this.

Senator FORD. We can do that, and if we keep fiddling around over there and you are in charge of it, and when are you going to state of the art, we will never get a new computer system. We will never get a system that will be decent.

So we keep fiddling along, and under your tenure and that of your predecessor we let all of the air control system go four or five different ways, like a covey of quail, until you have the management system to bring it together and go in a single direction.

So we are still floundering, and I think we are years behind with the NAS Plan where we estimated we would be at this time, are we not?

Secretary BURNLEY. Mr. Chairman, we are overall on the procurements.

One of the ironies of the sort of cross-pressures that the FAA and the Department are under right now—again, because buying this equipment for the air traffic side is a part of the Federal procurement process—is that a little less than a year ago the GAO put out a report on the whole NAS Plan procurement track. You probably remember that report.

It said two things. It said, number one, that the Office of the Secretary of Transportation had fallen down on the job because we had fast-tracked a number of these major procurements. We had not made the FAA jump over every hurdle that is established under Federal procurement procedures.

Number two, it commended us because in the months prior to the report we had, in fact, tightened up and they were now being required to jump over every hurdle.

Well, when I first read that report, I thought that is good, we are getting credit for having fixed it. But I think if you think about it, that is backwards.

In fact, one reason why we stay behind is that the pressures are to make sure you do every single little thing that the Federal procurement statute and regs require, which does slow it down. No question about it. If you make mistakes, then you get hopelessly behind.

So I think freeing up the air traffic side of the FAA makes extremely good sense, and we would do a better job as a country on those issues if we did that.

Senator FORD. Well, you said in your statement, and I quote, and I think you said maybe the year 2000 after it, but I am not sure, "convinced that fundamental changes in the FAA organizational structure are essential."

Secretary BURNLEY. Yes, sir.

Senator FORD. How long have you known that?

Secretary BURNLEY. Well, I tell you, Mr. Chairman, that really is a conclusion I drew late last fall for two reasons. One, again, you had initiated a series of hearings on this issue that had focused, I think, attention in a very constructive way of everybody who cares about this area.

Two, during the period of getting through the confirmation process in front of this Committee last fall, I did have occasion to think about where we had been and where we were going, and it became increasingly apparent to me that the process I have described today in my prepared testimony of trying to beat your head against these walls one at a time was not working to anybody's satisfaction.

Yes, weh ad gotten a lot of rules out that had been stuck for many years. Yes, we had gotten the decision to cut inspectors 25 percent reversed. But we were going at it in an incremental way of the pressures on things like procurements from the Congress through GAO were the reverse of what made sense to me.

So I began for both those reasons to tend toward the conclusion that it was time to look at the fundamentals again.

The other thing is, Mr. Chairman, as I said some weeks ago in a speech here in town, if you look at the complaints, concerns, perceived failings at how we do our aviation safety business today, they are literally the same list of problems that we had in this country 10, 20, 30 years ago.

You go back and you look at Congressional testimony from the late 1950s, the early 1960s, you look at magazines and newspaper accounts of problems, it is the same list. It is near-midair collisions. It is not enough controllers. It is obsolete equipment. It is exactly the same list.

So I think if you get that longer perspective, it does lead you to the conclusion that maybe it has not worked very well the way we started doing it in the late 1950s, and we ought to try to restructure it.

Senator FORD. Do you believe to date that the FAA has been more interested with industry concerns than those of promoting aviation safety?

Secretary BURNLEY. No, sir, I do not think it can be stated that simply.

I think that there are tremendous cross-pressures and that there are issues where on the regulatory side, as I said in my statement, there is concern about the effect it will have on the industry or some segment, because the industry, as you know very well, is an extremely diverse group. It is not one dimensional.

Sometimes it will cause them to take a somewhat more reticent view than you or I would want on these issues.

An example that has gotten a lot of public scrutiny in recent months is the question of how many emergency exits you are going to have on a 747. Now, I remember the shock and surprise of the then FAA administrator, which the Secretary and I shared at that point, when we all learned by reading about it in the papers that the regional administrator of the FAA for the northwest region had decided that it would be all right for a couple of emergency exits to be removed from those planes in the future when they were manufactured.

That was how we found out, by reading it in the newspapers. Obviously, that is the kind of issue where you want to be sure that the people who are writing the regulations are not unduly concerned about how many airplanes get sold in Europe or how many airplanes get sold in Asia.

I think it is a very legitimate responsibility for the United States Government to think about those issues and to help, and I think you ought to think about those and promote the industry from a different place, from a different address perhaps from the folks who are supposed to make sure first and foremost that the planes are safe.

It is that confusion of roles that sometimes, I think, creates a dynamic that none of us wants.

Senator FORD. Is there any reason we could not leave the promotion of the industry in DOT and sever off the safety?

Secretary BURNLEY. Mr. Chairman, I have tried very hard today and in my previous remarks on this to not get boxed in quite yet to a particular formula, a particular answer to these problems.

Senator FORD. Well, I am working on you. Go ahead.

Secretary BURNLEY. I want to resist getting boxed in today because I think the Byrd Commission is working on this same area. It is one of the assignments Congress gave them, and I would like to see what they say in three or four weeks.

Senator FORD. That is not a court case, so you do not have to worry about saying something today.

Secretary BURNLEY. I will say this. I think the answer to your question is yes. We could retain the promotional responsibilities. You could put the regulatory responsibilities elsewhere if you wish. That has been the point I have tried to drive home today.

I would urge you to be sure that if the regulatory responsilities are housed elsewhere that you make absolutely certain that there is somebody with line authority, that there is someone who has a broader perspective than just aviation to whom the FAA has to report on a day-to-day basis.

Congress has been very deeply systematically involved in aviation safety issues for decades. That over time can push the FAA in the right direction.

But again, as my testimony was designed, I hope it did illustrate with the comments of Congressmen Levitas and Mineta, it does not work very well if you do not have line authority.

So, wherever you put the safety regulatory responsibilities, somebody has to watch the watch dogs, and I think it is important that that function be housed within the executive branch, and then, on the other hand, you take the air traffic side and you put it in the place that frees it up best, that guarantees it stable and sufficient financial resources, and that permits them to keep up for the first time in 30 years plus.

Senator FORD. I hate to lose my line of questioning here, but I have had it long enough.

Senator Danforth.

Senator DANFORTH. Mr. Secretary, in thinking about this matter of whether or not to create more independent agencies, I have been sitting here trying to remember what independent agencies this committee has jurisdiction over.

We have the FCC, the FTC the ICC and the CPSC.

Now, I take it that this suggestion is to create yet another independent commission?

Secretary BURNLEY. I understand that S. 1600 as it is presently drafted creates an independent agency, yes, sir.

Senator DANFORTH. An independent agency similar to the FCC and the FTC and the ICC?

Secretary BURNLEY. I would defer to the subcomittee chairman who stepped out for a moment on the similarities, but certainly it is similar in the sense that it would not be a part of any cabinet-level department and, as the bill is presently drafted, would have a person in charge who would be locked in in terms of tenure and who would not be subject to removal at the pleasure of the President.

Senator DANFORTH. I have had the privilege of serving on this committee for 11 years now, and one thing it creates is the possibility for some very colorful hearings.

Senator DANFORTH. We have had the FCC testify here. I remember especially when we heard from Mark Fowler, who was the Chairman of the FCC, and Mike Pertschuk, who was the Chairman of the FTC, and the ICC and the whole question of rates that were charged to captive shippers. The problems we have had with some of these independent commissions or agencies is that they really are independent.

Sometimes we have regretted that after we have created them. I can remember hearings where we have sat here, when Mark Fowler was the Chairman of the FCC, for hours, and no dent was made by the Commerce Committee.

That is what I understand to be the suggestion in terms of the FAA that is now before us.

Let us say that President Reagan is now in his last year of his presidency. Let us say that he decided that he wanted to appoint as the chairman of the FAA Mark Fowler. Let us say that he wanted to appoint Mark Fowler as the chairman of the FAA, and he was confirmed.

Then he would be there for seven years? Is that he idea?

Secretary BURNLEY. I understand the bill to be drafted that way, yes, sir. Or Mr. Pertschuk, to use your other example.

Senator DANFORTH. So let us say that it is Mark Fowler, and he is confirmed, and then, for example, perish the thought, Governor Dukakis becomes the next president. Then Fowler stays on at the FAA? Is that the notion?

Secretary BURNLEY. I would guess, Senator Danforth, that certainly you would have a good deal of communications, probably from afar and using hand grenades with the pins pulled over time between the chairman of the FAA and the incumbent president, because there would be no way if it is truly independent for the President or anyone else in the executive branch to rein in someone who perhaps had strayed in ways that the Congress was very unhappy with.

Senator DANFORTH. What kinds of decisions could Chairman Fowler make when he is the chairman of the FAA?

For example, could he make the decision that National Airport was available only to general aviation and that all commercial aviation had to fly out of Dulles Airport? Could he do that?

Secretary BURNLEY. Senator Danforth, I think that would be an extreme case, but the answer is, given the complexities of the air traffic patterns around the D.C. metropolitan area, given these buildings across the river in Arlington, that if you had an FAA administrator who wanted in that extreme case to make that allocation in air traffic on safety grounds, that could be done.

There is another area that is related to that. If you have someone who simply decides that local communities really should have absolutely nothing to say about noise issues, that that is an issue that the national government in all its majesty and wisdom is going to fix with one fix for everybody, you could have an administrator who simply said I am going to overrule any local decisionmaking on these issues.

It is that kind of thing that, again, I think Congress needs to look at as it is addressing this issue to make sure that however you answer the structural questions, there is a way for the Congress and there is a way for the President of the United States, who are the elected officials of this government, to get their hands on those issues so that those issues can be addressed.

There is another area, picking up your train of thought, where you would have to be sure, absolutely had to be sure, the President had line authority in some question, and that is the question of any foreign policy implications.

Right now, for example, we have an issue that is being treated as it should be, to a large extent, as a safety issue inside the FAA and the agency, and that is the question of foreign repair stations. Do we trust people outside of our boundaries to repair and maintain aircraft that fly in this country?

Now, that is an issue, again, that should be treated first as a safety issue, but clearly it has very substantial foreign policy ramifications, and you have to be able at some point to see that those are addressed as well.

Senator DANFORTH. We have a problem now with this Mode C transponder situation.

Secretary BURNLEY. I have heard something about that, Senator.

Senator DANFORTH. Yes. It is my hope that we can correct that. Obviously, that was a proposed regulation that was agreed to by DOT.

Secretary BURNLEY. That is correct.

Senator DANFORTH. Do you think we would have a better chance of correcting that kind of situation if there were an independent agency, or do you think the chances of correcting that situation are better if the FAA is within the jurisdiction of the Department of Transportation?

Secretary BURNLEY. Senator, let me answer the question this way. I really should not, under the Administrative Procedure Act, get into the merits of that one, since it is an open rulemaking.

Senator DANFORTH. I am just using it as a hypothetical.

Secretary BURNLEY. Again, I think the two examples I mentioned today where the FAA administrator decided and proceeded in the early 1980's to cut the inspector work force 25 percent, it took the Secretary to come in and say "stop, reverse it, rehire people."

Additionally, as I mentioned, Secretary Dole did just flatly refuse to let a rulemaking go forward that would have extended the time for medical exams for people with airmen's certificates because, clearly, it was going to result by the FAA's own analysis in additional deaths, additional injuries, additional crashes.

So I think the answer to your question is that, again, you have accountability under the present system on regulatory matters, and you have to preserve that in some fashion. However you address this issue, somebody has got to be there who can on some day say, "time out a minute, that does not make sense and we need to go in a different direction."

Senator DANFORTH. Is there a fine line between micromanaging on one hand and a totally unresponsive freewheeling agency on the other hand?

Secretary BURNLEY. Senator, it is much like beauty and pornography. It is in the eyes of the beholder.

As the Supreme Court said, Mr. Chairman, once upon a time, you have to be careful to draw those lines, and reasonable people are going to disagree about where they are drawn.

But again, I think, the record in recent years is very clear on two points: One, the Office of the Secretary has been intrusive in a number of safety regulatory matters, and I have talked about those today with more candor than is typically the case in executive branch witnesses describing how we do business when we close the door.

Two, the fact that the Secretary's Office has been more intrusive has clearly created a good deal of hostility and resentment in the industry that is being regulated. That should be no surprise to anyone.

When you put out a whole series of new cabin safety rulemakings, it does cost money. There is no question. When you tell the industry you have to replace all those seats and put new fabric on them, and you have to put new liners both in the passenger area and the cargo area, and you have to put smoke detectors in the bathrooms, it costs money.

So there is no question that when you have, finally, a Secretary who says I want that rulemaking on my desk by the following date, it will revoke hostility and resentment among the people that are going to have to pay those bills.

Senator DANFORTH. Do you think the Secretary of Transportation is more likely to be safety conscious and that the FAA would be more likely to be in the pocket of the industry, or is that overstating it?

Secretary BURNLEY. I would think that is overstating it. Again, life is not that simple most days.

What you have is an agency which of necessity must be led not just by the administrator but by the deputy, by the associate administrators, by people who know in intimate detail how airplanes work, how the industry is structured, who understand those issues on a technical level as well as a professional and managerial level.

That is important, and we tried hard over at least the last seven or eight years that I am most familiar with to have people at the top of the FAA who knew aviation.

Now, is it possible that some days a perspective of that leadership, and I am not talking about a given human being but the group of senior leaders, will be skewed in a way because they are part of that community, they are part of that industry themselves.

They often are out of that industry and they often return to that industry when they leave the government.

Is it possible that you would want some days to have somebody secondguessing them? When I came here today, I said I believe very strongly that you need that. You need it.

As the Chairman has indicated, there are several ways to get at it. It does not have to be the Secretary of Transportation, but I think it needs to be somebody who is in the line authority in the executive branch.

There have been some ideas bounced around, and your question about independent agencies, I think, raises another issue, which is "can it be done by a committee? Can it be done by a collegial body?"

I would think that some of the things we have seen, say, at the Interstate Commerce Commission three or four years ago where they literally were gridlocked for many months on all major issues, I would hope would persuade the Congress not to go in that direction; that the centurion over at the FAA who hopefully has a broader perspective, who has a national policy perspective, who can get in to see the President in the Oval Office as when needed, that that person would be someone in the line of authority ultimately to the President United States who, again, like you ladies and gentlemen of the Congress, is elected, unlike me, who is appointed.

I think it is important ultimately that you have that broader perspective. That is what the checks and balances are about.

Senator DANFORTH. May I ask just one more question, Mr. Chairman?

Obviously one of the things that bothers members of Congress and has bothered members of Congress has been the accumulation of funds in the trust fund and the desire of the administration to use these accumnulations to help with the rest of the budget.

It is a problem that all of us, I think, have shared; I have, as well as Senator Ford and the rest of us.

How would that problem be in any way changed or lessened if there were an independent agency? Would that somehow affect the budget process? Would it free up more money for airport construction and the like?

Secretary BURNLEY. Not in and of itself, Senator. There are things you can do with any of these models that are being discussed that will free up more money, but certainly just creating an agency outside the Department of Transportation does not address that particular issue.

I do think that, again, we will have lost an historic opportunity this year if we do not get at that issue. I think we should get at it, and I think the way that we ought to go about it is taking that operational side of the FAA, the business side for lack of a better term—and I am not talking about privatizing. Let me be very clear.

I am not here saying you have to sell it to General Motors, but getting it out of the normal executive Congressional branch processes so it has the opportunity to do what all the major companies in this country do today, which is pay people that have to live in Chicago and Boston more money because it costs more to live there than it does in my home state of North Carolina or the Chairman's home state of Kentucky.

It means freeing them up from these unbelievably intricate procurement processes so they can buy the equipment for the air traffic control system they need.

Now, in the course of doing that, it seems to me, you can send the user fees with them, and you can send it with them in a way that everybody would agree legitimately takes them out of the Federal budget.

Let me give you an analogy. It is not perfect, but it is illustrative.

Amtrak is not in the Federal budget. The only portion of Amtrak's funding that you folks see or that we see, can get our hands on, are the subsidies they get each year from the United States Government; but the ticket revenues never show up in the Federal budget, and expenditures by Amtrak never show up in the Federal budget.

Nobody thinks that is strange. Nobody thinks there is anything wrong with that process; that it somehow destroys the integrity of the budget.

I think there are models like that. Again, I am not selling that one today. I am just saying there are alternatives out there that the country has figured out in the past where you can free up the funds that accumulate in the trust fund so that they can be spent on the operational side.

It is to some extent coincidental but I think it important to note that if you look at where we are this year and what we are requesting for next year, the funds that we are looking for and are now spending for the air traffic control system, including the NAS Plan procurements, could be funded virtually entirely out of the existing user fee structure. You are not even talking about an increase.

Now, if you did that, that would mean that you then funded AIP and you funded the cost of the regulators that remained in the executive branch out of a different pot of money. You could have a new trust fund for those. You could do it out of general revenues, which is where we are getting a lot of the money today for those accounts.

But you do have the happy coincidence, at least today, of having a revenue stream that almost precisely matches the operational costs of the air traffic control system and the capital cost of that system.

Senator DANFORTH. Thank you, Mr. Secretary.

Thank you for your patience, Mr. Chairman.

Senator FORD. Senator Pressler.

Senator PRESSLER. I have just one general question concerning these independent agencies from the point of view of public administration.

I know it is more efficient to have everything centralized under the Department of Transportation or Department of Commerce or whatever, but over the years I have found that the smaller town interests are better protected sometimes in these independent agencies, very frankly.

Now, theoretically, there is greater efficiency to have everything under the Department of Transportation or whatever, whether it is communications policy or rail policy or air safety or whatever. But for some of us—and it is not just small town areas in South Dakota, it could be upstate New York or areas of California where you have captive travellers—we seem to do better with the independent agencies, very frankly.

I suppose the reason is a sort of a tyranny of the majority. If most people are flying between Los Angeles and New York, that is where the services are provided.

If there is a captive traveler, a businessman in upstate New York in a small town who has to go to a business meeting unexpectedly, he cannot really get a SuperSaver, a cheap ticket. If someone has to go to a funeral, they cannot anticipate and so forth.

So where I am coming from, based on my experiences during my nine years on this committee, is that we have been better protected in terms of our shortline railroads, or communications problems, such as long distance rates, by the independent agencies rather than by the Congress.

I am not really arguing here, but I am just telling you my experiences over the years. We have had better luck with our problems in South Dakota in going to an independent agency than we have had going to departments, very frankly.

Secretary BURNLEY. Senator, that is a very interesting perspective, and I do not know that there is a good, single answer to it other than to say that you have got to be sure wherever you house a regulatory function that there is a way to make certain that people in rural areas as well as people in urban areas have their interest taken into account at some point.

I understand what you are saying. Hollering at them is easier if they are independent.

Senator PRESSLER. I would not say just rural areas. Let me amend that. It could be the handicapped, or it could be anybody who is traveling or making a call or whatever who is at a disadvantage, someone who is not in a lucrative market; or it could be someone trying to get cable TV in an inner city; or minority groups. It could be lots of people.

Generally speaking, those groups have a better chance with the independent agencies than they do with the departments.

Secretary BURNLEY. In terms of the regulatory situation which I am suggesting today, you have got to have continuing accountability over line authority in the executive branch while you move the air traffic out, if we can figure that part of it out.

It seems to me that you run a very substantial risk if you have one person who is locked in for a fixed term. If that person has a point of view that you are comfortable with, then you are golden for however many years that person is in office.

But if that person has a point of view that you have strong concerns and differences about, as Senator Danforth was making the point earlier, then ultimately it is very difficult for anybody to get that person's attention, to be sure that those needs are being adequately addressed, whether they are rural or whether they are particular subsets of the American population, for example the handicapped, as you mentioned.

Let me give you a perfect example in the handicapped area that is current. As you know, we have got a great deal of concern on all sides of the issue about the question of whether people who have certain physical handicaps should sit in the rows where you have got the emergency exits on aircraft.

And we have been in the process of working through what is called the regulatory negotiating process, to try to at least narrow the differences among the people who are particularly concerned about this issue. A senior attorney from the FAA stood up one day in those meetings last fall and announced, to the surprise of everybody in the meeting, including the people from the Office of the Secretary, that the FAA was taking that issue off the table, they were not going to discuss it any more, and that it was a safety issue and that they would let the world know when they got good and ready what the answer was.

Now, I have to tell you that I sent a pretty strong negative signal back to the FAA lawyers when I heard about that incident. And unfortunately, it broke the dynamics of the process completely apart. We had some people walk out from the private sector who had been in those meetings for months.

I have been trying since to get the process going again, to get the people back in the meetings. But there is enough skepticism and hostility now that you have got an atmospheric problem that we have been working on.

Now, I raise that only to make the following point. Again, if you have got someone over whom there is no day to day line authority and you have something like that happen, that is it.

That is it, you are stuck. And you end up with the situation that in fact, depending on your particular concerns or points of view, can be much worse, because there is not any accountability, there is not any check and balance there.

Senator PRESSLER. Thank you very much.

Senator FORD. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Secretary Burnley, I think you make a very cogent statement here and an argument, perhaps, that we should separate the safety regulatory side from what you call the "business side."

I think there is a great deal of basis for that rationale I wonder how, in your view, those two branches would interact with one another?

Secretary BURNLEY. Senator McCain, you have got to regulate the industry on the safety side. You have got to do it. You ask perhaps the most important question of all that would have to be answered satisfactorily. The Congress and we would have to work that out to the satisfaction of the country.

But it seems to me it is by no means impossible to do that. The reason I say that is that I think that you can have a relationship in which the regulators, the people who I suggested today should stay in the executive branch, wherever housed, have regulatory authority over the operators of the air traffic control system.

In fact, that is the way it works today between the FAA and the airlines. Now, you have got Mr. Crandall patiently sitting here. Mr. Crandall's operation is now international in scope. It is huge, it is enormously complex.

Senator MCCAIN. He has all the slots.

Secretary BURNLEY. That is right. You talk to him about that.

And whether or not you think you have got the answer right on a given day or not, you have a regulatory relationship there that I think we still have a consensus in this country ought to exist. In other words, that the United States government ought to regulate airlines on the safety side.

I do not know of anyone arguing against that in this day and age. Quite the contrary. So I think that you can certainly structure that relationship between those who operate air traffic control and the regulators.

Now, does that require some hard planning and work? You bet? It is simple? No. Can it be done? I think absolutely.

And I think that, just as today it is terribly important that you have ultimately somebody who vis a vis the airlines can say, well, yes, we know it will cost more money, but we need for you to do it for safety reasons, I think you can have exactly that same relationship with the air traffic control system.

There is an issue right now that is hot inside the Department and the industry, and it is the kind of issue where you can see that it would work that way if you put it together right. You will recall and I know that the Chairman will certainly recall that last spring the FAA announced that we had some new software in our flow control room that ties the whole air traffic control system together, and they also announced last spring that by Labor Day of last year we would have in place the software necessary to project a couple or three hours ahead.

Well, I am amazed that we have not been pounded more by you ladies and gentlemen of the subcommittee than we have been. But that software has not been put in yet. They are now just putting it in.

Senator McCAIN. Maybe you should not have told us.

Secretary BURNLEY. Well, I am here being candid. I have my candid hat on today.

They now are promising you and me it is going to be fully operational by June 1st, when the heavy summer travel season begins. Well, simultaneously there is a lot of talk inside the air traffic control part of the FAA about how we ought to go ahead right now in March and let the planes fly closer together and not have anybody anywhere in the country where they have these in-trail separations that were set up after the PATCO strike of 15, 20 miles sometimes.

Now, the Administrator and I have discussed that and he has concluded, and I am enthusiastically in support of his conclusion, that what ought to happen is, if we are going to do that at all, you wait and you do it after you have the software in that the FAA promised the country would be in place so you can project ahead as to where the traffic is going to build up before you can fly the planes closer together.

I mean, that is the kind of issue that it seems to me you can easily address by having the regulatory guys ultimately having the final say. And I do think it can be worked out. But I would emphasize again, it is not simple. You cannot sit down with a plan of organization of FAA and say, okay, these three boxes go over here and those four boxes go over there. It is going to be much more complicated than that.

Senator McCAIN. Thank you, because I think you might have proposed something here that would be an important input into the chairman's legislation. I think your proposal resolves a lot of the concerns I had about the role of the regulatory safety side.

At the same time, I think that the chairman's legislation reflects the frustration that we feel and that you have articulated that the FAA, composed of outstanding men and women, simply are not sensitive in a variety of ways, to not only the needs of the public, but perhaps to the safety requirements that we feel are so crucial in assuring those men and women of America who use our airlines in larger and larger numbers that they will do so in safety.

So Mr. Chairman, I think this has been very valuable testimony this morning, and perhaps we can deliberate on it in the future.

Thank you.

Senator FORD. Thank you, Senator.

Mr. Burnley has done extremely well today and I am pleased with his testimony, because he has been frank with us.

Just a couple of points. Sometimes we have very little control over the Secretary of Transportation. You know, we have no control over the Administrator of FAA, but hell, you are the other side, and if we did not pound each other's head every once in a while, you would not know I was up here. So you know, there is very little control over that.

Administrator McArtor said here in his testimony the other day that already, with the East Coast problem and landings, he has reduced the separation of aircraft from three miles to two and a half, and he did that. So there is no additional software or anything putting those airplanes closer together. So he has already done that.

Secretary BURNLEY. I think that, Mr. Chairman, is on the approaches. The in-trail separation is the one that he has held back on.

Senator FORD. He has already authorized that, I think, from three to two and a half.

Secretary BURNLEY. That is my understanding also.

Senator FORD. You talk about FAA being not susceptible to political pressure. You know well that they have to make hard decisions.

Well, the Secretary of Transportation is more susceptible to political pressures than a seven year Administrator would be. Maybe he would make a decision with that cover, where the Secretary of Transportation would get a call and you would say, let us delay it another 30 days or let us expedite it or let us just do away with it altogether.

That would be political pressure. I think when your boss calls you, you will respond. If you do not respond, you ought to resign. I understand that.

But I think that you would be more susceptible, and I say that advisedly or lovingly, however you want to take it, but that you would be more susceptible to political pressure than an independent agency would.

Secretary BURNLEY. Mr. Chairman, I would not disagree at all with your observation.

Senator FORD. Let us stop right there, then.

Secretary BURNLEY. If you can forebear for a moment, I would say, though, in defense of my predecessors—I have not been Secretary long enough to do it one way or the other to any great extent. But in defense of my predecessors of both parties, I do not know of a single instance where a Secretary of Transportation has ever said to an Administrator for political reasons, do not go do something that the Administrator wanted to go do.

Senator FORD. But you accuse them of maybe being too close to the industry that they are administering. And what I wanted to do was for you to be very careful about that.

Secretary BURNLEY. I was not accusing anybody.

Senator FORD. You said they were more susceptible.

Secretary BURNLEY. There is a susceptibility there, and what you get—and I agree with you about susceptility of Secretaries. What you get on the safety regulatory side, having both in the loop, is you get checks and balances. That was the only point I was trying to make today, is that you do not run the risk all one way or all the other.

Senator FORD. You get checks on the basis of the other agencies you have to fund. You get checked by OMB. You get checked for everything, and you frustrate FAA with all these safety needs.

They put forward their request and all of a sudden you find that they are trimmed inside the agency. The Secretary will trim, then OMB will send it back and say, we cannot do that.

We have got to find a better way.

Secretary BURNLEY. I agree, Mr. Chairman.

Senator FORD. We are sitting here with $6 billion surplus. Why has it not been spent?

Secretary BURNLEY. I am in complete agreement that we do need to find a better way, and let us make sure everybody gets a piece of the credit or blame, because it was our request, the Administration's request, that the continuing resolution cut by almost a quarter of a billion dollars for the NAS plan in '87, December 1987, for the fiscal year 1988.

And I do think we can do better. I am not here to defend any level of the process on funding. To the contrary, what I said today is I think on the operational side we ought to get it out of the present system. I share completely your frustrations in that regard.

Senator FORD. Let me just clear up one other thing, that if I am the Senator from Kentucky and alive, Mr. Fowler and Mr. Pertschuk will never be Administrator of the FAA.

Now, let us just turn that around a little bit. What if Senator Danforth or Senator Kassebaum came up as director and Governor Dukakis was elected President of the United States. You would like that, would you not?

Secretary BURNLEY. No, sir. I might be amused by it.

Senator FORD. Well, call Jack Danforth real quick.

Secretary BURNLEY. I might be amused by it, but as a matter of good public policy I think it would be a concern. And the reason is this --

Senator FORD. It is no different than the hypothetical that he asked you. He got Mr. Pertschuk in, who is anti-Wendell Ford. You know, he even writes about me in his book. He cannot write a book; you know, he gets inspiration from me.

Secretary BURNLEY. I have not spent money on his book. I will go get it from the library.

Senator FORD. Do not waste your time.

Secretary BURNLEY. Mr. Chairman, the point is this. At the beginning of the Reagan Administration, a great deal of time was spent by both the Congress and the executive branch in having it out with the FTC because of differing policy views.

I do not think on the whole there is a lot to be said for a situation where you had anybody that was a holdover having the ultimate say on aviation safety, that a new President and a new Administration and a new Congress cannot get out. And I think that is the point I understood Senator Danforth to be making.

You could end up spending so much time—it has happened in the early eighties with the Federal Trade Commission—going after each other on policy issues from afar. And you have a problem there that you just do not need to set the dynamic up and create if you can avoid it.

Again, that just goes to the question, it seems to me, of whether you have somebody with tenure or not. That is the issue I think that drives that.

Senator FORD. Well, you look at most organizations today. There is some tenure, except politics.

Secretary BURNLEY. I would say this. I think in the private sector if you have got somebody who is running a large company, even if that person has a contract—in fact, you see it all the time. The board of directors, if they get dissatisfied they have to pay that fellow or that woman a lot of money to leave under the contract, but nonetheless the board can say adios if it is dissatisfied with the performance.

So it is having somebody who ultimately has the ability to make a change if things are way out of kilter that I think you would want to try to preserve.

Senator FORD. Well, I think that you ought to have the ability to have a debate, because there will be two sides to that. And if your intentions are right and your heart is right and you find somebody that is smart enough to put those two together in statutory language, then I think we can have the direction that all of us want for FAA.

Now, I am sitting here as chairman a little over a year now. I have tried in that length of time to understand all sides. I have tried my best to put everything together. We will have a package that is going to be hard for you to say, it does not meet my five points.

Secretary BURNLEY. Well, I would welcome that.

Senator FORD. Well, I understand that and that is the reason I want you for it.

And when I think the bill comes out of here, we will be in a position of accommodating a lot of people. But my friend, we are not doing things that are right. The FAA is too slow. Look at that chart.

I was whispering a while ago, get your picture in front of that and you will make all the magazines in the country, because that is the picture of government in the eyes of people. There is no fast track for safety regulations on that chart.

There are too many obstacles, and that is what is wrong with the system. You talk about if you were in business. This is not a business.

Secretary BURNLEY. Mr. Chairman——

Senator FORD. This is a format for disaster, the way we are going.

Secretary BURNLEY. That is right, and we need to fix both.

Senator FORD. Thank you.

And if you have a direct line there, it takes 18 months for a safety regulation to get through. It just seems to me that we are whistling Dixie, and the only place you can do that without anybody jumping on you is south of the Mason-Dixon.

I have started perspiring, Senator Exon, so I will turn it over to you.

Secretary BURNLEY. You are putting your voice at further risk.

Senator FORD. Well, I do not care. If you can stand it, I am enjoying it, because people feel sorry for me and they want to help me.

Senator EXON. Mr. Chairman, the only question I want to ask of the Secretary is, once again, if we have a—he knows what is driving this whole proposition and that is the proper expenditure of the trust fund. And if the separate agency does not come into being, is he in a position to provide some leadership with regard to loosening up that trust fund so that the money would be expended as it was intended?

Now, what is your position again? I have asked you about that before, but I want it for the record again.

Secretary BURNLEY. The answer is that we have asked going into fiscal year 1989, the Administration has asked, for a 13 percent increase for the FAA's budget in all its particulars.

Senator EXON. Yes, I know that. I just came out of a meeting of the Budget Committee. We are struggling with everything over there, and I know that the Administration is saying they came up with this increase, but we have extreme constraints all over the budget.

The fact remains that, even after the increase that you were just talking about, we are still going to have a whopping multi billions of dollars left in that trust fund that we have not used the way it was intended. And under the squeeze of the budget, it does not make sense to me that we are not tapping it further.

Do you agree with that?

Secretary BURNLEY. Senator Exon, I do agree. And what we have got is, with the way the trust fund is tied up now under the reauthorization legislation, we have got almost an inevitability that that trust fund balance will go up this year and it will go up next year.

And then we will have triggered, if that happens, rolling back the user fees, even though we all know there are tremendous needs that ought to be met. I do not think that any of us wants to see that happen.

But I do think the fundamental question remains, not a question of which account are you paying it out of, but the question is how much are you spending and is it meeting your needs? Now, we have asked the Congress for fiscal year 1989 to give us a total of $6.4 billion for aviation needs in this country.

The trust fund will generate about $3.8 billion in fiscal year 1989. So we are, the way the reauthorization legislation is written, building these balances. And I mean, that balance will go up even while we are asking you to give us almost twice as much money as the trust fund will generate.

It is a terribly difficult, frustrating, but ultimately I think secondary issue. I think the primary issue for you and for me is how much money are we going to spend compared to our needs?

Whether you get it out of the trust fund or whether you get it out of the general revenues, again it is important, but there is a second question I think that we ought to be asking. I would hope, if the Congress does not see fit to fund fully what we have asked for for fiscal year 1989 because of the very difficulties that you have described, the competing needs, that again with your leadership and the Chairman's leadership, we can at least fix it so that in future years, particularly the air traffic control side of the FAA, that we have gotten it out of that process.

So regardless of what the other competing needs are, you have got a free flow of revenue that can be spent on making sure you have got the controllers you need, you have got the equipment you need, you have got an air traffic control system that people are satisfied with.

And I think that is why these hearings are so important.

Senator EXON. Thank you, Mr. Burnley.

Thank you, MR. Chairman.

Senator FORD. Thank you, Jim. We appreciate it.

The next witness will be Mr. Robert Crandall, President and CEO, American Airlines. Mr. Crandall, if you will wait just a moment while the Department of Transportation leaves the room.

Thank you for being here today. Thank you for your patience, Bob. You may proceed.

STATEMENT OF ROBERT L. CRANDALL, CHAIRMAN AND PRESIDENT, AMERICAN AIRLINES, INC.

Mr. CRANDALL. Thank you, Mr. Chairman. My name is Robert Crandall and I am Chairman, President, and Chief Executive Officer of American Airlines.

I am very glad to have the chance to appear before this committee in support of S. 1600. I think the proposal is an important first step towards moving toward our goal of rebuilding and expanding the country's air traffic control system so that it can safely accommodate aviation's dynamic future.

Let me try to give you, if I may, an airline perspective of the problem we face and say a word or so about its importance to the country. In 1978 when we got airline deregulation, U.S. air carriers transported 267 million passengers. In just a few years, we are going to be carrying twice that number.

To accommodate the growth in air travel, airlines are adding very substantial numbers of aircraft to their fleets. Airline route systems, if you take them together, the series of hubs and spokes, now look a great deal like a series of overlapping spider webs.

The unhappy fact is that our air traffic control system was not designed to handle today's volumes and it was not designed to handle the very closely grouped flows of aircraft that hub and spoke systems generate. The truth of the matter is that when we deregulated the air-

lines, we failed to focus on the fact that we had to position and equip the FAA so that it could also adapt to this new environment, and what we are doing today is paying the price for that failure.

While the growth in air travel is a burden to the air traffic control system, and we have talked some about that this morning, I think it is important to keep in mind that it represents an important economic plus for the United States.

The U.S. scheduled airlines alone employ about 440,000 men and women, and that supports a tourism industry that provides 5.5 million U.S. jobs with a $63 billion annual payroll.

I must confess it was not too long ago I was rather pessimistic about our willingness to face up to this problem. At one point, it seemed to me that growing air traffic control delays were leading us all to pull in different directions.

More recently, I have become optimistic about our collective ability to agree on the economic importance of providing the facilities for aviation growth, our ability to reach consensus about the nature of the problems that must be corrected, and finally, our ability to fashion solutions that will lead to the kind of air traffic control system we need.

The statements accompanying the introduction of S. 1600 are excellent descriptions of the shortcomings of the existing system. I endorse them without qualification. Secretary Burnley's testimony today I think is persuasive evidence of his commitment to change. I am sure I speak for the airline industry in applauding that new consensus and in commending this committee and you for the leadership you are providing as we seek to restructure the FAA to better do its job.

Delays are fewer today than they were a year ago. But I hope it is clear to all of us that we are living on borrowed time, and without some very fundamental changes in the way we plan and the way we manage the air traffic control system, we are going to have a new crisis, and it is not too far down the road.

To use a very overworked phrase, we have a window of opportunity in which we can assess our problems and fashion a remedy.

To build support for the dramatic action that we think is required, the airlines and the aerospace manufacturers are planning to launch in just the next few weeks a program to explain the problem. For lack of a better name, we have referred to our effort as the "Fix the System' initiative.

The underlying goals of that effort are the same as those that led to the introduction of S. 1600. Our initiative is not a legislative proposal. It does not undertake to fix blame for the inadequacies of the present system.

It is simply an effort to rally broad support for what we think are the five essential objectives of all of us:

First, we think we have got to make more effective use of existing resources and existing technologies, so that today's system, what we now have, can handle more flights with fewer delays and without compromising safety.

Second, we have got to complete a broad modernization of the ATC system so it wil be able to handle demands in the years to come.

Third, we have got to have a viable national airport plan which will assure the construction of additional taxiways and runways and airports when and where they are needed.

Fourth, we must restructure the FAA so that it is better funded and more effectively managed. We think FAA Administrator Allen McArtor has done an excellent job with the tools at hand, but the structure in which he operates denies him the resources and the flexibility needed to achieve dramatic improvements.

Fifth, we must put in place without delay a long-range planning process to ensure that we do not in the twenty-first century face the same crisis all over again.

The fourth objective, the restructuring of the FAA, is pivotal to the success of all of our efforts. Unless we make progress on that point, we do not think there is any hope for long term success.

In my view—and I think this is a view shared by most airline CEO's—the FAA's air traffic control responsibilities must be removed from the Department of Transportation, because that is the only way to free the organization and the individuals responsible for performing those duties from Federal budgetary and procurement and personnel rules that simply do not work in practice.

Where should those responsibilities be lodged? On this score, everybody seems to agree we ought to look at a wide variety of alternatives. The airlines are not beholden to any particular plan so long as the solution accomplishes those objectives.

The status quo we think is the one alternative on which we ought not to spend much time.

A difficult problem that I think we can all anticipate as we weigh those alternatives is just how much government involvement in air traffic control matters is required by the public issue. That is a question on which differences of opinion are strong and about which emotions are apt to run high.

I am a private sector person and I would favor a nonprofit user-owned, user-funded entity that operates subject to appropriate oversight by the Federal government. But as I have already said, I am not wedded to any particular solution so long as whatever we decide on gets the job done.

Finally, I word on safety. As this committee ponders alternative approaches to the restructuring of the air traffic control responsibilities of the FAA so as to make possible the continued growth of air commerce, it is inevitably going to be confronted by expressions of concern about safety.

I believe your response should be and can be that we need not stifle growth to preserve safety. To the contrary, if we apply more resources, if we utilize better management techniques to amplify the chart—if we can get rid of the chart, I think we can accomplish both an enhancement of safety and a substantial expansion of capacity. Only by doing both can we serve the many constituencies that depend very heavily on this country's commercial air transportation system.

That concludes my statement, Mr. Chairman. I will naturally be happy to respond to any pressures you may have.

Senator FORD. Thank you very much, Mr. Crandall.

I have two or three questions that I would like to ask to get them in the record from you. In the Secretary's statement earlier, and I am sure you heard him, he identified a number of aviation safety actions in recent years by DOT, necessitated, he said, by FAA's reluctance to respond to public pressures.

How would you respond to the Secretary's concern that FAA needs to be prodded occasionally to address pending safety issues?

Mr. CRANDALL. Mr. Chairman, I think aviation safety is an immensely complex subject. In the name of safety, you can sometimes do things which, if not carefully thought through, may actually have an adverse effect on safety, so that a great many things which sound simple and may work turn out to be complex and turn out to not work after the fact.

I think I would respond in several ways. I would say first that I do not believe, speaking certainly for the scheduled carriers, that anybody in the scheduled carriers would reflect hostility towards any idea which we believe will enhance safety, nor do I believe that the scheduled carriers are in any material sense—that their views toward safety are in any material sense, in any sense at all, bound by economics.

I think we all recognize that in the long run the public, the passengers, pay for whatever is done in the name of safety.

The consequence is, I think the notion that the industry resists safety initiatives is simply wrong. On the other hand, in a pluralistic society there are those with many ideas.

I think that whether the FAA as a part of the Department of Transportation gets prodded by the Department of Transportation or whether an independent FAA gets prodded by the inevitable involvement of many other people in the safety issue, that a broad consensus push towards optimizing safety is going to happen and is important.

As for the particular examples chosen by Secretary Burnley, I think in those particular cases the impact of the Department of Transportation was probably positive. On the other hand, I am not persuaded—and I am not at all sure he is—that that is the only method by which we can introduce pluralism of other views into the safety debate.

Senator FORD. Your "fix the system" program seen to minor or promotion that is going on, your efforts and that of the Air Transportation Association, to secure improvements in the aviation system. Why have the airlines and the aircraft manufacturers retained a public relations firm that costs you a lot of money to do much the same thing?

Mr. CRANDALL. In fact, it is the very same effort, Mr. Chairman. The airlines, the manufacturers, all of us think that a growing and vital aviation industry is a tremendously important national asset. We think it is a tool in international competitiveness. We think it is an industry that needs to grow in an increasingly service-oriented economy.

And we think that the public needs to understand the importance of having in place an infrastructure within which we can continue to grow without compromising safety and without subjecting the public to the very long delays and many inconveniences of a couple of years ago. Effectively, it is a public relations campaign in support of your objectives.

I think what your legislative proposal says is aviation is important, we should get the constraints out of the way, we should manage it efficiently. We are trying to build public support for that same point of view.

Senator FORD. I guess we could say that your "Fix the System" group is not legislative oriented, yet all the actions you outlined for the group seem to require government action.

Do you hope to improve the ability to create something that will be better for the system than what we now have? That is your objective?

Mr. CRANDALL. Yes. Our objective, Mr. Chairman, basically is to say to the public at large, we have got a problem here which in our minds at least is analogous in many ways to the kind of highway problem we had back in the 1950's.

We have got a very important, very large industry whose growth and whose ability to serve the public is being severely and increasingly severely hampered by an absence of facilities. And those facilities can only be provided by the government.

So what we are trying to say to the public is, why do we not all urge the U.S. government in its many parts to move ahead, to meet its responsibilities, to manage the air traffic control system efficiently, to allow it to grow so that we can have a growing and more important aviation industry.

Senator FORD. Mr. Crandall, I think I have to ask this question to be sure that we are on the right track. You said several times that we would push FAA toward more efficiency. And I do not want to get the impression left out there that you are looking for efficiency rather than safety. So as I understood you earlier, you said you did not want to in any way compromise safety or the effort in improving the safety of the airways.

Mr. CRANDALL. That is absolutely right, Mr. Chairman. My company's business, our whole industry's business, depends on the public's presumption that we are all dedicated to management of safety, and indeed we are.

So we would choose to do nothing, now or at any time in the future, that would compromise safety at all. On the other hand, I think that by applying the best technology, the best management resources, adequate resources, we can optimize, improve safety from where it is today. By applying the very best tools to it, the best computers, the best software, the best radar, the best instrument landing system, the best cockpit instrumentation, we can enhance safety.

And at the same time, I think we can not only enhance safety, but also as a byproduct, if you will, I think that safety enhancement will come as a byproduct of more efficiently managing the system.

Senator FORD. I thank you, Mr. Crandall. You are very nice. There may be some questions from other Senators and I notice, as you have in the past, you would be willing to respond to those.

Mr. CRANDALL. We would be happy to.

Senator FORD. We will send those to you in writing.

Thank you, sir.

Mr. Halaby, I believe you are next. We need to move on here before we have to go over and exercise our prerogatives with dignity and ignorance. Mr. Halaby, you may proceed with your statement. Good to see you again.

STATEMENT OF NAJEEB HALABY, DULLES ACCESS RAPID TRANSIT, INC.

Mr. HALABY. Thank you, Mr. Chairman.

I have a prepared statement and I will try and summarize it.

It is significant to hear from Secretary Burnley and President Crandall that the status quo is unsatisfactory. And on behalf of twelve members of the aviation community, we would certainly agree with that important conclusion. I am here at their request and they are here at your request to give you some ideas, some dynamic solutions out of the status quo.

We support S. 1600. We listened with interest to the indictment by the Secretary of the status quo, and we are not here to defend or indict FAA or any Department. We agree that getting the FAA out of the usual constrictions and constraints of the governmental rules, of personnel particularly, avoiding the "abstruse procurement rules," to quote the Secretary, "to liberate the air traffic control system from the budget cycle," and to have a consistency and balance between the regulation and operation. From a personal point of view, the idea that an independent FAA is "an experiment that has failed" and the "administrator needs maximum oversight," to use the Secretary's words, is hard to agree with.

The FAA Administrator as conceived in your bill is appointed by the President, with the advice and consent of the Senate. He is subject to all kinds of presidential persuasion and constraints. He reports to the Congress in its numerous committees, and in particularly the Appropriations and authorization committees.

He is subject to continuous press scrutiny and, as you said, ways would be found to get rid of him if in the course of his seven years he violated the public interest.

That this experiment of the last 20 years has recently failed is a fact, and the Secretary made that very, very clear on the basis of his active responsibility during the past 6 years. On the other hand, we want to offer some solutions, as distinguished from further studies of the matter as he proposes.

For example, the idea that air traffic control is a commodity to be sold by the agency and bought by the aviator is so simplistic and so far off the mark that I am deeply concerned at that thought by the real boss of the FAA, as one who has experienced this business for some time.

It is a collaborative system. There is no way that the Secretary of Transportation or the FAA Administrator can fly an airplane or equip an airplane or maintain an airplane or train a pilot. It must be done by the operators. They must be obedient, and if they are not they should be corrected. But they also must collaborate.

There is no more intimate collaboration nor precarious collaboration than between a pilot and a controller. They are not buyers and sellers of services. They are collaborators in a system of safety that has worked very, very well and worked very well here and elsewhere in the world, following the example of this U.S. system.

Today I am speaking for a group of twelve members of that community, every one of whom lives by safety. And if he fails to provide safety, he fails in the marketplace. So we are not here just as a special interest group. We are here, sir, withy a miraculously unanimous view of twelve people who live with this hour after hour, in the general public interest.

And you have demanded some solutions as well as further studies. You know so well that FAA is unique. It operates 24 hours a day, seven days a week, at hundreds of places, civil and military, nationwide and abroad.

It saves lives and limbs and property, not just in the air but on the land and sea as well, and in the largest numbers and the longest distances. It is so essential to national security, so part of the military security of the country, that in an emergency the President can sign an order transferring it into the Department of Defense.

Around the clock, it regulates airmen and airways and airports, all of whom have to work with and obey the regulator. So they are collaborators in the finest sense. It must maximize safety and minimize danger and delay and discomfort to millions of people.

And as Bob Crandall said, this is a period of dynamic growth. Whether it was released by deregulation or not is subject to some controversy. But we are going from 300 million revenue passenger miles today to about 450 by the year 2000. And some studies show that it could be as much as a trillion revenue passenger miles within 50 or 60 years.

That is the kind of dynamic operational situation that we have to master, we have to design the structure to meet. If there has been a failure, it is in the experiment by DOT in deregulating the operators, decimating the controllers and deficit reduction via the Trust Fund and all at the same time. And it is not just numbers; it is the quality of the service and the nature of the safety.

It is very important that we bring the authority directly in line with the responsibility. By putting many layers between the man responsible and the Secretary with the authority we do not enhance safety. So we believe, as you do, that there should be an independent FAA. It should be headed by an administrator appointed by the President for a fixed term. He reports to the President and the Congress and ultimately to the Federal courts, so we have plenty of balance and checking.

But he must be assured of stability of funding and a consistency of knowledgable policy and the resources with time in which to develop systems that have been proposed.

We would suggest that new user tax money flowing into the trust fund, after the date of the enactment of your bill, be directly and permanently appropriated for use by the FAA in a manner consistent with an annual FAA prepared budget to be presented to the Congress.

We recognize that it would be reviewed by the Appropriations Committee and the Authorizing Committees. They make determinations about expenditures of these funds, and they have the responsibility to continue a strong oversight of the FAA budget.

Future authorization and tax legislation on a multi-year basis would be required and would guide general spending and tax levels. The previously accumulated fund balance would remain on budget for the foreseeable future, but ordinarily only the interest would be used to finance the system as we foresee it.

We believe the trust fund surplus at present represents an overpayment of taxes or user fees by users, and should be used only for aviation purposes. Nonetheless, our recommendation does not contemplate a reliance on the surplus in the immediate future. It could, however, be used as a reserve fund.

The public benefit share, including national defense, would require a continuation of the traditional appropriations process. We would suggest that only this one element of total funding be derived from general fund revenues.

It is possible, even, to reduce the amount of general fund revenues under such a system over that being required at the present. This element would remain on budget and would be subject to government-wide budget limitations.

Over time, and to the extent justified by recommendations, by future economies, derived under other elements of our recommendations, this general fund contribution could decrease through savings.

This is a hybrid, Mr. Chairman. We recognize the problems you and other Senators face on the Budget Committee, the authorizing committee, the Appropriations Committee. We propose, therefore, that the main flow be out of the trust fund.

But in addition, and that would be automatic, but in addition we would have through the regular process a substantial amount of regular appropriations, and provide the agency with a long-term assured stability of funding.

Strong oversight would continue, and it would be easier for the Congress to see to it that tax revenues collected for aviation are in fact spent directly for that purpose.

I think it would greatly facilitate the ability of the Administrator to develop and follow through on a rational long-range program.

Diverted and inconsistent and unpredictable funding, of course, is just part of the problem. While correction of this is essential, we have to have a new distinctive FAA career service under the umbrella of the civil service.

Selection to this FAA career service, along with advancements and protection of employment rights, would be merit-based. Collective bargaining, subject to binding "baseball-style" arbitration, would greatly enhance what has often been antiquated about labor and management relations in the FAA.

No strike, collective bargaining would be authorized under appropriate conditions by certified, duly-selected bargaining units. Compensation, benefits, and other terms and conditions of employment would exist under the traditional personnel structure, which serve as a floor level, from which new programs would advance.

Such innovative new programs would offer greater flexibility of pay and benefits, so long as the net benefits were not diminished.

So long as the salary levels are subject to an overall cap, we could within those caps have wide bands within which the managers in the FAA could much more flexibly use personnel.

The FAA should be free to design the cost of living, based on other incentive programs to respond to particular personnel needs.

Chronic problems such as the difficulty the FAA has experienced in hiring and retaining highly-qualified scientists and engineers could be met quickly with specialized employment programs.

Similarly, when combined with reliable funding programs, this improved personnel management flexibility would permit the design of a dependable career ladder within the FAA.

Not surprisingly, employees are far more willing to accept career development transfer, even to less desirable locations, if they are not financially penalized for doing so.

And they know that they will not linger in these locations indefinitely, due to inadequate permanent change of station funds. Our recommendation would permit the design and adaptation of the system demanded by these operating needs.

We come then to procurement. You specifically noted that your bill did not cover either personnel or procurement changes, and we believe that you wished us to give you some ideas on how to deal with that difficult as it will be to free up an exceptional agency operating under crisis conditions.

That chart of Mr. Burnley's was designed by the FAA staff to prove that rulemaking sould be somputerized and modernized, but it is also, of course, a chart for disaster under the present set up. And while implementation of the National Air Space Plan has and will continue to provide a tremendous boost to FAA's capability to respond to demand, it is unfortunately true that the existing procurement process has slowed progress to a very substantial degree.

As a result, many of today's new improvements are no longer state-of-the-art by the time they come on-line. And you could under the present set up display a procurement chart, just like that rule-making chart, if you were so disposed.

We would recommend an adaptation of the current procurement system to the new situation, and we would suggest a process adopted as a result of the Packard Commission on defense procurement. We think in

FAA, without the very special Army, Navy, Air Force, and Marine Corps forces at work, such a system would work.

We seek clear, short command channels, funding stability, limited reporting requirements, communications with the users, early prototyping and testing, all managed by a small high-quality staff who know what they are doing, as called for in that Commission report.

Specifically, there should be established within the FAA an Associate Administrator position specifically charged with creating and administrating an acquisition program of excellence and the state-of-the-art technology and equipment.

Congress should articulate clear direction to the FAA to proceed with his procurement efforts in the most efficient and expeditious manner.

This mandate would be incorporated in the program, along with structural reorganization, to reduce redundant review and place the procurement team direct with the user, the procurement decision-maker, and the manufacturer.

The Associate Administrator (acquisitions) would be charged with reviewing all of the present procurement system, and recommending legislative changes within the first year.

We think there should be an oversight, or advisory, public advisory committee. And in order to facilitate these new steps, we think that such a committee would be very desirable.

You could call it a board or a council or a committee. But it should be made up of a cross-section of our wisest citizens, including but not limited to users of the FAA services.

It would be a sounding board, it would be another check and balance, it would be a conduit for communicating industry and user concerns back to the FAA. It should be an essential part of the legislation.

We would thank you and the other sponsors of this bill for giving us the demand for suggestions. We think that the recent statements of the Secretary of Transportation are an indication that the change, the time for change, is now.

And on behalf of these 12 organizations, in the general public interest, we support your bill, and we suggest these changes.

We are prepared to offer you specific language after some further thought of what we have heard here today. And if you wish, it could be made available by this group.

[The statement follows:]

STATEMENT OF NAJEEB E. HALABY, CHAIRMAN, BOARD OF DULLES RAPID TRANSIT, INC.

Mr. Chairman, my name is Najeeb E. Halaby and, at the present time I am Chairman of the Board of Dulles Rapid Transit Inc., a private corporation working to create an essential rapid rail link between Washington Dulles International Airport and the existing Metro system. In addition I fly general aviation aircraft regularly in the system and I am Chairman of Hanelle Aviation, which provides fixed base aviation services at Leesburg Airport. It has been my honor to have acted as an Assistant Secretary of Defense, Vice Chairman of the Presidential commission which set up the FAA, Administrator of the FAA and Chairman of Pan American World Airways. On balance, I believe it would be fair to say that I have more than a passing interest in aviation!

I appear before you today as the spokesman for a broad coalition which shares my deep concern for aviation and has asked me to present our views. The groups includes the:

American Association of Airport Executives,
Airline Pilots Association,
Aircraft Owners and Pilots Association,
Air Transport Association,
Air Traffic Control Association,
General Aviation Manufacturers Association,
Airport Operators Council International,
Helicopter Association International,
National Business Aircraft Association,
Regional Airline Association,
National Aeronautics Association and
Experimental Aircrat Association.

We have come together in response to your call, Mr. Chairman, to recommend substantive changes in the way an independent FAA should be structured, funded and managed and, thereby, to fill in the framework which you provided with the introduction of S. 1600.

FAA is unique. It operates 24 hours a day, seven days a week in hundreds of places—civil and military—nationwide and abroad. It saves lives and limbs and property not just in the air but on the land and sea as well and in the largest numbers for the longest time and distances. It is so essential to national security that with the stroke of a pen the President can draft it into the Defense Department. Around the clock it must regulate airmen, airways and airports, while building and maintaining a system with state-of-the-art technology. It must maximize aviation safety and minimize danger, delay and discomfort to millions of U.S. and foreign travelers daily. Its beneficiaries pay directly in taxes for its services. Therefore, a unique autonomous organization with extraordinary managerial capabilities is required.

The driving force behind our effort has been the clear realization—which we believe is shared by the twenty-three cosponsrs of S. 1600 and many others—that fundamental change must occur in the approach our nation has taken to running our airports, airways and airmen. The Administrator of the FAA simply must be given clear and direct authority responsibly to manage the affairs of the FAA. That is why we support the principles embodied in S. 1600's call for an independent FAA headed by an Administrator appointed to a fixed term. The adoption of this approach will enhance the ability of the FAA to carry out its primary mission of assuring aviation safety.

Simultaneously, the FAA must be assured of consistent, necessary funding. The FAA must be in a position to hire and retain the best and brightest employees in an environment offering challenge and reward—and with the expectation of high achievement. Finally, the FAA must be able to seek new, innovative methods for conducting its procurement efforts for the multi-billion dollar National Airspace System Plan and assuring develoment of the national airport system.

We well recognize that one does not lightly undertake an effort such as this. We believe that the status quo is failing the test of time and available advanced technology—and FAA must master change if aviation is to continue to benefit the public as it has in the past.

The secret to success in a high-tech operation has always been innovation and adaptation. If the United States is to continue to lead the world in aviation and its safety, we simply must be willing to alter the status quo with regard to the FAA. In each instance we have firmly based our recommendations for changes on tested, reliable methods employed in the past—but with the essential modifications needed to meet rapidly evolving circumstances.

FUNDING

Our first and most important addition to S. 1600 which we would recommend is in the area of funding. Recognizing the extraordinary complexity of the budget process, we understand as well the sensitivity of this issue. As a result, in balancing the old with the new, we would suggest a hybrid funding process combining elements of the traditional approach with a new, direct funding concept.

Aviation User Tax Funding

Specifically we would suggest that new user tax monies flowing into the Airport and Airways Trust Fund after the date of enactment S. 1600 be directly and permanently appropriated for use by the FAA in a manner consistent with an annual FAA prepared budget to be presented to Congress. It should be recognized that the Appropriations Committee would continue to have an important role in making determinations about expenditures of these funds and a responsibility to continue its strong oversight of the FAA budget. Future authorization and tax legislation, on a multi-year basis, would be required and would guide general spending and tax levels. The previously accumulated fund balance would remain on budget for the foreseeable future but ordinarily only interest would be used to finance the system.

We believe the Trust Fund surplus at present represents an overpayment of taxes by users and should be used only for aviation purposes. Nonetheless, our recommendation does not contemplate a reliance on the surplus in the immediate future. It could, however, be used as a reserve fund in the event revenues fall short of aviation budget needs or it could be utilized to fund high-priority, safety and capacity projects.

Funding For Defense Use and Public Benefit

The public benefit share including national defense, would require a continuation of the traditional appropriations process. We would suggest that only this one element of total funding be derived from general fund revenues. This element would remain on budget and would be subject to government-wide budget limitations. Over time, and to the extent justified by future economies derived under other elements of our recommendations, this general fund contribution could decrease.

In following this hybrid course we are convinced that the Congress, and ultimately the public at large, would have a far better understanding of what budgetary issues truly confront the FAA—without filtering by OMB or the Department of Transportation. Strong Congressional oversight would continue and it would be easier for the Congress to see to it that tax revenues collected for aviation are, in fact, spent directly for that purpose. At the same time the process I have outlined would greatly facilitate the ability of the Administrator to develop and follow through on rational, long range programs and to manage them effectively.

PERSONNEL REFORM

Diverted, inconsistent and unpredictable funding, of course, is just part of the problem. While correction of this deficiency is absolutely essential to a renewed and reinvigorated FAA, it is also a fact that personnel management reform must be undertaken as well. We have sought to find a mechanism which will permit the FAA—and in particular the loyal and dedicated FAA workforce—to retain the best elements of the existing personnel system and to enhance those elements with policies crafted to the unique character of the FAA.

To this end we are recommending the creation of a distinctive FAA career service under the umbrella of the civil service. Selection to this FAA career service, along with advancements and protection of employment rights, would be merit based. Collective bargaining, subject to binding, "baseball-style" arbitration would greatly enhance what has often been inadequate labor and management relations. Collective bargaining would be authorized under appropriate conditions by certified duly selected bargaining units. Compensation, benefits and other terms and conditions of employment, which exist under the traditional personnel structure, would serve as a floor level from which new programs would advance. Such innovative new programs would offer greater flexibility of pay and benefits so long as the net benefits were not diminished.

Salary levels, while still subject to the overall cap currently applicable, would be broadened into wider salary bands to offer far greater flexibility in compensating and motivating employees. The FAA would be free to design cost of living based or other incentive programs to respond to particular personnel needs. Chronic problems, such as the difficulty the FAA has experienced in hiring and retaining highly-qualified scientists and engineers, could be met quickly with a specialized employ-

ment program. Similarly, when combined with the reliable funding program I mentioned previously, this improved personnel management flexibility would permit the design of a dependable career ladder within the FAA. Not surprisingly, employees are far more willing to accept career development transfers, even to less desirable locations, if they are not financially penalized for doing so and they know that they will not linger in those locations indefinitely due to inadequate permanent change of station funds. Our recommendation would permit the design and adaption of the system demanded by operating needs.

PROCUREMENT IMPROVEMENTS

Just as flexibility and incentives are key ingredients in personnel management improvement, they are also important to the solution of the FAA procurement dilemma. While implementation of the National Airspace System Plan has and will continue to provide a tremendous boost to the FAA's capability to respond to demand, it is unfortunately true that the existing procurement process has slowed progress to a substantial degree. As a result, many of today's "new" improvements are no longer state of the art by the time they come on line.

We would recommend an adaptation of the current procurement system to the new in seeking improvement. We would suggest a process, adapted from the Packard Commission report on Defense procurement, to achieve the desired results. We seek clear short command channels, stability, limited reporting requirements, communication with users, and early prototyping and testing—all managed by a small, high quality staff as called for in that Commission report. Specifically we would suggest:

First, that there should be established within the FAA an additional Associate Administrator position specifically charged with creating and administering an acquisition program of excellence. This would provide the corollary benefit of raising the status and urgency of the procurement program within the FAA.

Second, Congress should articulate clear direction to the FAA to proceed with its procurement efforts in the most efficient and expeditious manner permissible under current law. This mandate would be incorporated in the program along with structural reorganization to reduce redundant review and place the procurement team in direct consultation with both the product user and the procurement decision maker.

Third, and finally, the Associate Administrator (Acquisitions) should be charged with responsibility for review of the mechanics of the entire procurement program of the FAA. Legislative changes that are determined to be necessary or desirable should be incorporated into an Associate Administrator's report which should be transmitted through the Administrator directly to the Congress. We would recommend that this occur within two years of the establishment of the Associate Administrator (Acquisitions) position and that the report's recommendations go into effect unless disapproved by the Congress.

ADVISORY COMMITTEE

In order to facilitate these new steps, the last major recommendation we would make would be the creation of an advisory committee. Such a committee, made up of a cross section of our wisest citizens, including users of FAA services, would serve as a sounding board for the Administrator and a conduit for communicating aviation industry and user concerns back to the FAA. The creation of the committee should be an essential part of the legislation.

In conclusion, Mr. Chairman,—both personally and on behalf of the aviation groups I am representing today—we would like to thank you and the other cosponsors of S. 1600 for getting this legislation moving. The establishment of an independent FAA with a fixed term for the Administrator are essential first steps in the process of making the FAA into the exemplar of government excellence. Putting those features of S. 1600 together with the other recommendations we have outlined today would enhance the potential for excellence immeasurably.

It is apparent from testimony before this Committee, recent statements of the Secretary of Transportation and reports of the direction being taken by the Aviation Safety Commission that the time has come for this historic 100th Congress to act on the urgent need for FAA reform. We are working to finalize our recommendations for amending S. 1600 to reflect the views I have discussed with you this morning, and we would be pleased to share these with you at the earliest convenient moment.

Senator FORD. It is refreshing to have you testify with your background and your common sense approach. You gave me some ideas the last time you were here. And I have tried to pursue them.

I do not have any direct questions because I have read all of this, and I think I understand. And I would hope that, after your testimony, you may want to doctor your recommendations a little.

At that point I would like to discuss it with you, and maybe some Members of the Subcommittee, so that we might prepare for markup. Because I will have a substitute for the original S. 1600. And I think everybody understood that when I started we tried to get as much into it as we could.

One item that I want to question you about just a little bit, that is on the creation of the advisory board, or whatever you want to call it.

Do I take from you that the consumer as well as the provider, as well as the user will be on that advisory committee.

Mr. HALABY. Yes, sir. Of course. But it should be a general public interest advisory board, rather than a special interest or a narrowly-focused board.

Senator FORD. So we underscore general?

Mr. HALABY. Yes, sir.

Senator FORD. Is there some way we can make it mandatory that there is a public or representative on the advisory board, just so that we do not get cross ways with accusations saying, well, we will all wind up with those in the industry, and those of that use it will not be—we need, I think, to provide the language that gets us there, and you struck the changes in procurement procedures and lots of other things.

That struck a real good chord. Senator Exon, I am going to turn it over to you.

Senator EXON. Mr. Chairman, thank you very much. I am going to be brief.

Mr. Halaby, you are somewhat fortunate indeed that our distinguished Chairman is having difficulty with his voice. He would have probably strung this hearing out. There are those of us who did not talk as much as others, and therefore we have our vocal chords.

Let me ask you——

Senator FORD. And some just sing with bands.

Senator EXON. At least I can assure all that the difficulty that my friend and colleague, whom I served with as Governor for a long time, the difficulty with his throat has nothing whatsoever to do with tobacco. I think he would want me to get that in, for the official record.

I just want to have one question. You represent here today a considerable body of the public sector with regard to aviation.

I am wondering if you and the organizations you represent are giving enough attention, as I think you should, with regard to what appears to be an extreme shortage of pilots in the outyears, at least, to meet the needs that we are going to, at least that we are all predicting is going to take place.

Also, I serve on the Armed Services Committee, and one of the critical problems we have today is the pilots, keeping pilots. Certainly one of the major suppliers of pilots in the private sector have come directly out of the military.

So we have a problem here. In the long run, have you ever, you and your organizations, ever considered the possibility of eventually using some trust fund monies, if needed, for encouragement and the promotion of educational opportunities to train more pilots in the private sector? Hopefully we would then not be as reliant as we are at the present time on military pilots.

Mr. HALABY. Senator, we do not have a coalition position on this. But I think there would be general consensus that there is a real problem.

We have been so dependent upon the output of military pilots in all aspects of aviation. Now we cannot see that same output coming out in relation to rising demand. So there has to be some augmentation.

The support of private organizations, such as Emory Riddle in Florida, where there is a very substantial number of highly-trained pilots coming out, is important.

It is also desirable that we have, after a pilot gets his air transport rating, a way of building up that seasoning and experience in the cockpit with hundreds of hours before you operate as an airline pilot.

So there is a real problem. It has not been receiving enough attention. It is now being considered by this very group in an informal way, substituting much more private and commercial training for the diminishing military training.

As you know, there was a civilitn pilot training program before World War II. So the government has tsupported pilot training.

Now, with respect to the use of the trust fund, I think you would find some concern, serious concern, that——

Senator EXON. I was afraid of that.

Mr. HALABY. That you would divert from the airways and airports money for the airmen training.

That if Mr. Crandall is right, and if the estimates that I have seen are right, that we are going to double, we are going from 300 million to 450 million or 500 million in the next dozen years, the enplanements and the tax revenues will be so great conceivably that there might be some left after airways and airports to subsidize airmen.

I think that would be their position. It certainly seems to me, however, that we have got to make sure that the airways are safe before we subsidize the training of pilots out of the Trust Fund.

There are some pretty good jobs in aviation, even "big pay jobs in aviation," as K.C. Jones used to say. So there is some thrust, there are some incentives for private training.

Senator EXON. Well, thank you very much. You are a very talented individual.

I do think you have missed your real calling. You should have been a politician. You just made a very excellent statement.

Senator FORD. We need a new preacher at our church. I think he could collect money too.

Senator EXON. I want to associate myself with your remarks. I just want to say that.

I hope that all of us very much concerned about aviation will recognize that it looks like this is going to be one of our major problems in the outyears, this being pilot shortages.

I would hope that somewhere along the lines we would recognize and realize that aviation is not going to work unless we have got the people to fly the airplanes. Regardless of all the other facilities.

So I have not got a firm position on what to do on this matter. But I am encouraging, wherever I can, some advance thinking to be directed in this area by people concerned about aviation. Because I think it is a major problem.

Mr. HALABY. The airlines themselves, and other commercial operators, have an incentive to reach all the way back into primary flight training.

And then some countries, other than the United States, and perhaps here and there in the United States, they are going all the way back to taking them right out of college, so to speak, and bringing them up through the airline itself.

I think there is some private initiative that can rise to this demand.

Senator EXON. I agree. Thank you very much. Thank you, Mr. Chairman.

Senator FORD. Thank you, Senator Exon. Mr. Halaby, when you have these thoughts refined a little bit more, as you stated earlier, I would desire a meeting with you and members of your coalition, so that we might discuss in an informal manner, with a longer period of time, some of the items that we have discussed here today.

So if you would do that for me, I would be much appreciative.

Mr. HALABY. We will certainly do so, sir. The refinement of the ideas into specific language that is workable is the key to this.

It is very difficult, as you well know. Passage of your bill is a first step, as Mr. Crandall as others have said. After that, to make this a modern enterprise befitting the industry and the public interest in that industry is the challenge.

And it can be done. We do not have to be traditional and reactive. We can be creative.

Senator FORD. Well, it is beyond me to figure out how you can be creative in this system. So we have to change the system just a little bit.

Because being creative, you are way out. You know, you have got to go back and be restrained again. So I like the approach, and my obligation then is to see that you have the vehicle that we could put it together.

I have the right thoughts. I just need the language here. And in the legislative language, setting out what we have in the bill, will be important to be sure that what we are saying others understand also.

So I will look forward to working with you, look forward to your call. This Committee hearing is adjourned. Thank you all very much.

[Whereupon, at 11:52 a.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF FRANK L. JENSEN, JR., PRESIDENT, HELICOPTER ASSOCIATION INTERN ATIONAL

Mr. Chairman, I am Frank L. Jensen, Jr., president of the Helicopter Association International (HAI). HAI represents the interests of over 953 member companies and individuals engaged in operating and manufacturing civil helicopters in the United States. We appreciate the opportunity to submit testimony to the Senate Public Works and Transportation Committee on the issue of an independent FAA.

ADMINISTRATIVE AUTONOMY

While we duly recognize and appreciate the efforts of the FAA under its existing administrative structure, we would recommend total autonomy and restructuring of the FAA if it is to better serve the growing needs of the aviation industry. As is presently structured, the FAA is incapable of performing its functions with sufficient flexibility and speed to meet the industry's quantum leaps into rapid development and expansion.

The FAA simply cannot serve the vital and often urgent needs of the aviation industry when it is subjected to the layering bureaucratic guidelines as they presently exist. We fully support the proposal laid down in S. 1600 that if the FAA is provided with greater managerial autonomy and consistent leadership it can be expected to address those special needs of the industry with greater attention and devotion.

There is no doubt that the FAA status quo is not adequately responding to aviation needs and some change in its present structure is imperative for continued growth and expansion.

FUNDING

We would suggest that new user tax monies flowing into the Airport and Airways Trust Fund be directed and permanently appropriated for use by the FAA in a manner consistent with an annual FAA budget.

INDEPENDENT FAA AND SAFETY

HAI supports an FAA independent of the DOT but opposes the idea of limiting FAA jurisdiction to matters of safety. The helicopter industry has noted the ensuing conflict arising from FAA's dual role of ensuring aviation safety, and promoting aviation. This conflict is healthy. At some point, the government must view safety within the real life perspective of transportation needs and economics. Some entity needs to weigh safety needs against transportation needs of the public, and then to enforce the balance. Such an entity requires the expertise presently available within the FAA

An example of an apparent imbalance between safety and promotion is the present FAA enforcement policy which appears to have shifted from emphasizing safety compliance to emphasizing reliance upon deterrence. The often drastic deterrence measures are frequently counter productive to the goal of safety.

Concern has been expressed about the FAA role in promoting aviation and possible conflict with the safety/regulatory activities. Since the Civil Aviation Act of 1938, there has been a policy directive to the FAA to promote, encourage and foster the development of civil aeronautics in the U.S. and abroad.

We believe there is a continuing role for the FAA to promote safety through such efforts as the accident prevention program, to encourage airport development where it is needed, to help the general public and students understand the importance of aeronautics and to enccura?e the adoption of worldwide safety standards.

A RECOMMENDATION

The independent FAA administrator should be appointed to a fixed term for the sake of consistency and continuous development and growth. He/she must be given adequate authority to manage the affairs of the FAA; to make, promulgate, issue, rescind, and amend rules and regulations in the light of existing and obvious needs of the industry.

STATEMENT OF HON. GORDON J. HUMPHREY, U.S. SENATOR FROM NEW HAMPSHIRE

Mr. Chairman, thank you for the opportunity to submit testimony.

My statement addresses three issues: The FAA's proposed rule on Mode C Transponders; Massport's Pace Plan at Logan Airport; and recent recommendations by the President's Privatization Commission.

The pressures on the air traffic control system have been well documented. Yet, the Federal Aviation Administration is on the brink of making things much worse.

The FAA's recent rulemaking regarding Mode C Transponders [NPRM 88-2] is outrageous. It goes far beyond the intent of Congress. It is unworkable. It is unreasonable.

First, the FAA proposal to require Mode C Transponders in all aircraft within 40 nautical miles of 254 airports, irrespective of their altitude, flies in the face of the intent of the legislation directing the rulemaking. Congress intended that safety be improved in the immediate area around airports which have a mix of general aviation and commercial airline traffic. The simple fact is that private and commercial turbine aircraft do not operate below 10,000 feet, 30 or 40 miles from an airport. They stay at altitude as long as possible for reasons of fuel efficiency and passenger comfort. Requiring Mode C Transponders in all aircraft from the gound to infinity in a cylinder 40 miles in diameter is not only a gross overreaction, it is a naked grab for power by the FAA.

The effect of the mode C requirement on the air traffic control system would be substantial. The controller's screen would be cluttered with additional targets. It will be hard for the controller to distinguish between what he is responsibile for—IFR flights and flights around the airport—because VFR flights would also be on his screen. The additional targets and clutter would make an already difficult job that much more difficult. It would do nothing to enhance safety. Indeed, it could undermine it by exacerbating the shortage of experienced controllers.

The FAA has also proposed to lower the en route Mode C requirement altitute from 12,500 to 6,000 feet. This is also an overreaction and a power grab. Congress expressed concern over safety. It did not mandate unrestrained rulemaking by FAA bureaucrats.

I wish to make a few comments about the Massachusetts, Port Authority's so-called Pace Plan proposed for Boston's Logan International Airport. The plan appears to discriminate against commuters who travel on small airplanes. The new fee structure cuts charges on passenger jets by 52 percent while slapping fee hikes of up to 284 percent on small planes.

Massport can be complimented for taking a step in the right direction for more efficient fees by moving away from *exclusive* reliance on aircraft weight in setting fees. However, the extent to which these fees are biased against general aviators is of deep concern to me. This committee may wish to examine massport's plan in further detail, for if implemented, it will probably be copied at other large airports around the country. Better to nip a problem in the bud now.

The President's Privatization Commission has recently issued its recommendations for reform of the air traffic control system and other FAA functions. Although I don't endorse all of the recommendations, some of the commission's proposals should be pursued.

I would urge the subcommittee to examine the Commission's proposal to reduce the Federal Government's direct role in airport development by allowing airport operators to level "passenger facility charges" to support the airport locally. Increasing airport operators' authority to seek their own revenues for capacity improvements could provide a user fee arrangement to secure reimbursement from those using the service. This could include charges for weather briefings and peak-hour pricing at airports. Such an arrangement could allow airports to increase capacity to meet the growth in air travel.

Incrementally privatizing the airport traffic control towers warrants close scrutiny. This could be accomplished by expanding private air traffic control operations. For example, the FAA would establish standards for controller performance and airport and airways operations, but they need not operate the system. Some air traffic control operations could be turned over to airport operators who could charge fees for their service. Fees could vary accounding to performance criteria, etc.

In closing, I commend the subcommittee for its efforts to address issues relating to FAA reform. I look forward to working with you.

NATIONAL AERONAUTIC ASSOCIATION,
"THE AERO CLUB OF AMERICA,"
Washington, DC, April 4, 1988

Senator WENDELL H. FORD,
Chairman, Senate Aviation Subcommittee,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR FORD: As you know from previous correspondence, the National Aeronautic Association (NAA), representing more than 250,000 Americans in our Chapters, Divisions, Affiliates, corporate and at-large members, enthusiastically supports S-1600 and the views of the Aviation Coalition on this legislation. Never have so many aviation organizations joined so wholeheartedly in a common case.

At the same time, I feel it appropriate to supplement the views of the Coalition. This is due to the unique position of the NAA which is not affiliated with any single aviation group, which receives no government support and which seeks nothing from DOT or FAA. Its major interest is that American leadership in aviation continues and that aviation makes its maximum contribution to national security and economic growth. Maximum safety is an essential ingredient of these goals.

I am also submitting this statement because of my own long experience in aviation safety. This goes back more than 30 years. During my tour in charge of Army Aviation, I managed the Army Aviation Safety Program. Later, as Senior Vice President—Operations and Airports—of the Air Transport Association, I served as the airline spokesman on safety matters and spearheaded the successful airline effort to introduce the wide body jets without an accident learning curve. I now serve, on a voluntary basis, as Vice Chairman of the Flight Safety Foundation which is recognized throughout the world as the one completely impartial and objective private air safety forum.

Finally, as leader of the U.S. Delegation to the Federation Aeronautique Internationale, the world's oldest international aviation organization, comprising seventy-seven member countries, I have had a unique opportunity to view the FAA as seen by its foreign counterparts.

But the principal reason for my submissions is the fact that the record, despite excellent presentations by the Aviation Coalition and other witnesses, is also absorbing a significant amount of misinformation about the history and work of FAA. This can do great mischief unless the facts are correctly stated. To this end, I request that this letter be made part of the record.

For years, I have studied the history of the Federal Aviation Act of 1958. How did the FAA come to be organized as it was under the Act? Very simply because a number of major mid-air collisions had shocked the nation, and responsible government action was demanded. After study and deliberation by the best available aviation talent, it was concluded that the functions affecting safety and its regulation were too dispersed and that they must be consolidated under one responsible executive—a "czar," if you will, over air safety. It was also recognized and agreed that this "safety czar" must be given the maximum insulation from political pressures. Hence, an independent FAA—there was no other way.

Nor did independence mean absence of oversight. After all, the Administrator was responsible to the White House and the appropriate Congressional Committees. While one might argue whether or not the National Transportation Safety Board has exceeded its accident investigation charter with its constant public pressure on FAA, FAA has never been without plenty of oversight. There have been a number of blue ribbon commissions such as yours and the Lowe Commission. And for better or worse there has also been vigorous media oversight.

How did this arrangement work? During its ten years of independence—from 1958 to 1968—FAA did very well. There was steady improvement in the safety record despite the inception of commercial jet travel; in the sixties FAA was universally regarded as the best of the regulatory agencies; and it was highly respected by all its foreign counterparts. It also demonstrated its ability to respond rapidly to new operational circumstances—or new technology. And when a strong-willed President forced the creation of a Department of Transportation, the rationale was not to improve air safety but rather to deal with intermodal issues and the national transportation infrastructure.

As a matter of fact, the legislative history of the Department of Transportation Act amply demonstrates Congressional intent that FAA should maintain its safety responsibilities.

Certainly, no one wanted safety regulation politicized. And for the first several years of its existence the Department did little to disturb the status quo. However, for the DOT, the FAA was the biggest game in town, and it was only a matter of time before bureaucracy prevailed and DOT was deeply involved in FAA's regula-

tory, procurement and personnel activities. For the past several years, then, safety regulation has been dominated by officials whose major preoccupation has necessarily been political.

It has been observed that on occasion, DOT has found FAA to be slow and has forced action. This may be true in a few cases; but for every one of these there is probably a dozen where FAA has been criticized for taking excessively strong regulatory action. In my years with the airlines, I was a frequent critic of FAA for being too tough.

The fact is that examples of anything can be cited; but the only objective truth is the actual accident record. Here even FAA's most violent critics admit that the U.S. aviation system is the world's safest and best. And to this very day the accident record continues to be outstandingly good. There *is* widespread concern that the margins of safety may be lessening; and the question is whether FAA is getting too little or too much oversight.

I'm convinced that the real problem is too much oversight. Let us examine DOT's "tough cop" approach. Now, there are times when the FAA must be tough—as it has been. But a strictly punitive, "tough cop" approach is counterproductive because it forces people to cover up or misrepresent the facts; and this can redound to the detriment of safety. Observations by the Flight Safety Foundation in connection with its safety studies support my conclusion.

What is undeniable is that FAA ended its years of independence in far better repute than it is today under DOT domination. FAA has many problems, but the first step to be taken to solve them is to remove FAA from DOT. Certainly, as an independent agency, it could attract a level of talent which has been in decline since it lost its independence. But if it is forced to continue with hoards of bureaucrats looking over its shoulder, it will never improve.

One other observation is pertinent. There is a tendency on the part of many to look upon transportation as land, air and water and to want to treat them all in the same way. This is a mistake. Aviation involves much more than air travel. It is critical to our national defense, and to rapid economic development of remote areas; it is a key issue in international negotiations—not only for air routes, but other issues as well; it is one of the most important factors in our international trade position; it is the base from which our space program must emerge. It should not be treated as just another transportation mode.

Mr. Chairman, S–1600 is on the right track. The suggestions of the Aviation Coalition will make the Bill even more effective. We must not be confused by red herring arguments. FAA's restoration is vital. We must spare no effort to achieve its enactment.

Sincerely,

CLIFTON F. VON KANN,
President.

THE REGULATORY PROCESS

ISSUE

There are 377 steps in the regulatory process.

BACKGROUND

The FAA Aviation Standards organization contracted with HH Aerospace Design Co., Inc. (HHA), to design a system to automate its regulatory process. As part of its effort, HHA broke the process down into minute detail to understand exactly how an individual project is handled from initiation through completion. A detailed Regulatory Process Flow Chart was developed to define the process and show the detailed system architecture needed to create a computer program.

The flow chart details the alternative processes for four distinct and separate types of regulatory actions, and each of those actions follows a different path on the flow chart.

Not every box on the flow chart is indicative of a step in a given regulatory project. Some boxes merely show the office having responsibility for a step; others identify the documents that need to be prepared as part of the regulatory process.

No rulemaking project follows all of the paths displayed on the flow chart—just one. In actuality, the chart can be broken down into four separate paths.

Project Identification—Is it a petition for exemption, a petition for rulemaking, an internally generated action, an externally directed action, etc.?

Processing a Petition for Exemption, Reconsideration, or Rulemaking—From receipt of the petition through issuance of the final document.

The Decision Process—Is rulemaking necessary, or can a nonregulatory action solve the problem?

The Regulatory Process—From decision on need for rulemaking through issuance of the final rule.

As an example, one segment of 18 boxes depicts what the individual team members do to assemble a package for coordination.

NOTE

While the flow chart shows a total of 60 boxes required to process a petition for exemption, only five major steps are involved: Acknowledging the petition, publishing the petition, developing the grant or denial, coordinating the document, and issuing the document.

The flow chart was intended to show the internal FAA process in its most minute detail.

The flow chart shows all OST and OMB action in a single box. It does not enumerate the minute detail of steps that are taken within OST and OMB.

NOTE

As of March 23, 1988, OST requires 15 copies of rules that are significant (determined by the Secretary based on safety, public impact/interest, etc.), and 6 copies of nonsignificant rules. Prior to March 23, we provided OST 32 copies for controversial rules, 21 copies for significant rules, and 7 copies for nonsignificant rules.

The flow chart shows 257 individual boxes for the processing of a rule.

1 box depicts an output point—No further action is taken on that item as part of the regulatory process.

26 boxes are possible decision options—Forward for further action, proceed or cancel, etc.

62 boxes are process steps, many of which are simultaneous, not sequential, e.g., Update Regulatory Agenda (Note: this is not a "step" in the reviewing of a rule), prepare regulatory evaluation, etc.

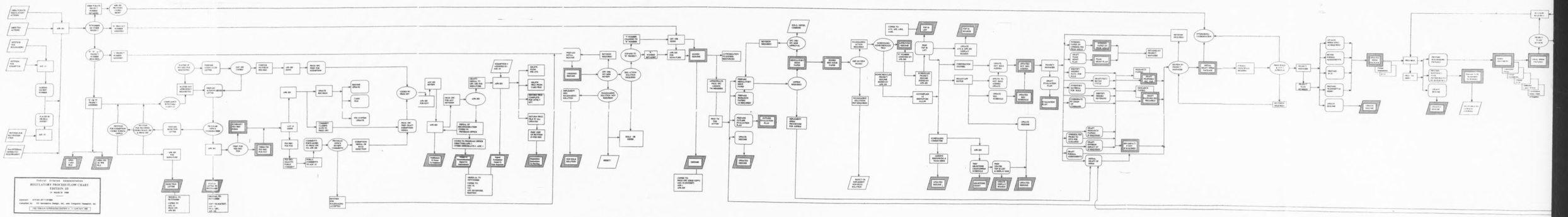
71 boxes show responsible organization or provide notations of what happens when a document is forwarded to that organization—Project manager analyzes comments, revises draft, etc. (Almost half of these boxes (40) are notations; the remainder (31) identify the organization having responsibility.)

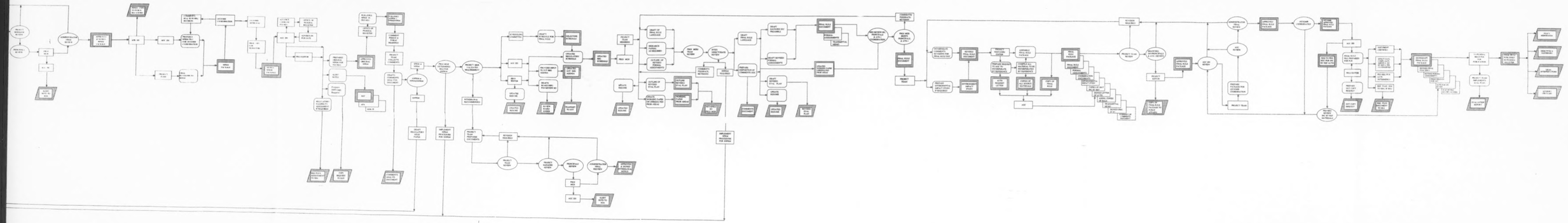
97 boxes represent the regulatory package or elements of the package at various stages in the process (e.g., the regulatory evaluation).

CONCLUSION

The number of boxes on the flow chart cannot be used to determine the efficiency of the regulatory process because the total number of boxes does not equal the total number of "steps" or anything else in the process that would enable an evaluation of their significance. The keys to rulemaking are timeliness and quality. In this respect, the flow chart is misleading.

84-489 (56)


REGULATORY PROCESS FLOW CHART
EDITION 02
31 MARCH 1988



84-459 O - 88 (in pocket on cov. 3)